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federal register

TUESDAY, MAY 17, 1977

highlights

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reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

H.R. 11..... Pub. L. 95–28
To increase the authorization for the Local Public Works Capital Development and Investment Act of 1976.
(May 13, 1977; 91 Stat. 116)
Price: $.35

H.R. 4876..... Pub. L. 95–29
Making economic stimulus appropriations for the fiscal year ending September 30, 1977, and for other purposes.
(May 13, 1977; 91 Stat. 122)
Price: $.35

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing **202–523–5240.**

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Subscription problems (GPO)	202–275–3050
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Scheduling of documents for publication.	523–5220
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5286
Public Inspection Desk	523–5215
Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)	523–5266
Finding Aids	523–5227

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HIGHLIGHTS—Continued

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list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

CUMULATIVE LIST OF PARTS AFFECTED DURING MAY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during May.

FEDERAL REGISTER PAGES AND DATES—MAY

Pages	*Date*	*Pages*	*Date*
22125–22354	May 2	23597–23794	10
22355–22556	3	23795–24044	11
22557–22858	4	24045–24227	12
22859–23125	5	24229–24709	13
23127–23497	6	24711–25312	16
23499–23596	9	25313–25485	17

rules and regulations

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Agriculture

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment revokes the position of Director, Conservation and Land Use Programs Division, because the position no longer meets Schedule C criteria.

EFFECTIVE DATE: May 13, 1977,

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3313(h) (8) is amended to read as follows:

§ 213.3313 Department of Agriculture.

* * * * *

(h) *Agricultural Stabilization and Conservation Service.* * * *

(8) (Revoked)

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77–13876 Filed 5–16–77;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Agriculture

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Private Secretary each to the Assistant Secretary and Deputy Assistant Secretary for Marketing Services because the positions are confidential in nature.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling (202–632–4533).

Accordingly, 5 CFR 213.3313 (a) (37) and (a) (38) are added to read as follows:

§ 213.3313 Department of Agriculture.

(a) *Offiee of the Secretary.* * * *

(37) One Private Secretary to the Assistant Secretary for Marketing Services.

* * * * *

(38) One Private Secretary to the Deputy Assistant Secretary for Marketing Services.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77–14062 Filed 5–16–77;8:45 am]

PART 213—EXCEPTED SERVICE

Department of the Army

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This section is amended to show that one position of Secretary (Steno) to the Deputy Under Secretary of the Army is excepted under Schedule C because the position is confidential in nature.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, (202–632–4533).

Accordingly, 5 CFR 213.3307(b) (2) is added to read as follows:

§ 213.3307 Department of the Army

* * * * *

(b) *Office of the Under Secretary.* * * *

(2) One Secretary (Steno) to the Deputy Under Secretary.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77–14061 Filed 5–16–77;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Housing and Urban Development

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Executive Assistant to the Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner because the position is confidential in nature.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, (202–632–4533).

Accordingly, 5 CFR 213.3384(b) (18) is added as set out below:

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(b) *Office of the Assistant Secretary for Housing—Federal Housing Commissioner.* * * *

(18) One Executive Assistant to the Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77–14059 Filed 5–16–77;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Housing and Urban Development

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Executive Assistant to the Deputy Assistant Secretary for Insured and Direct Loan Programs because the position is confidential in nature.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling (202–632–4533).

Accordingly, 5 CFR 213.3384(b) (19) is added as set out below:

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(b) *Office of the Assistant Secretary for Housing—Federal Housing Commissioner.* * * *

(19) One Executive Assistant to the Deputy Assistant Secretary for Insured and Direct Loan Programs.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-14060 Filed 5-16-77;8:45 am]

PART 213—EXCEPTED SERVICE

Department of the Interior

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This section is amended to show that one position of Assistant to the Under Secretary is excepted under Schedule C because the position is confidential in nature.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Bill Bohling (202–632–4533).

Accordingly, 5 CFR 213.3312(a) (46) is added to read as follows:

§ 213.3312 Department of the Interior.

(a) *Office of the Secretary.* * * *

(46) One Assistant to the Under Secretary.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-14058 Filed 5-16-77;8:45 am]

PART 213—EXCEPTED SERVICE

Entire Executive Civil Service

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule A all positions not in excess of GS–13, whose incumbents will implement the National Youth Conservation Corps program and are to be paid out of funds allocated under title III of the Comprehensive Employment and Training Act of 1973, as amended. Employment under this exception is not to exceed 18 months from the date that funds are authorized for this program under title III of CETA. This exception is granted because it is impracticable to examine for these positions.

EFFECTIVE DATE: May 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3102(hh) is amended to read as follows:

§ 213.3102 Entire Executive Civil Service.

* * * * *

(hh) All positions not in excess of GS–13, whose incumbents will implement the National Youth Conservation Corps program and are to be paid out of funds allocated under title III of the Comprehensive Employment and Training Act of 1973, as amended. Employment under this exception is not to exceed 18 months from the date that funds are authorized for this program under title III of CETA.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-14111 Filed 5-13-77;10:49 am]

Title 7—Agriculture

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Commuted Traveltime Allowances

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends administrative instructions prescribing commuted traveltime. These amendments establish commuted traveltime periods as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which an employee of the Plant Protection and Quarantine Programs performs overtime or holiday duty when such travel is performed solely on account of such overtime or holiday duty. Such establishment depends upon facts within the knowledge of the Animal and Plant Health Inspection Service.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

H. I. Rainwater, Regulatory Support Staff, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, U.S. Department of Agriculture, Hyattsville, MD 20782, 301–436–8247.

Therefore, pursuant to the authority conferred upon the Deputy Administrator, Plant Protection and Quarantine Programs, by 7 CFR 354.1 of the regulations concerning overtime services relating to imports and exports, the administrative instructions appearing at 7 CFR 354.2, as amended, March 18, 1977 (42 FR 15055) prescribing the commuted traveltime that shall be included in each period of overtime or holiday duty are further amended by adding (in appropriate alphabetical sequence) the information as shown below:

The following entry is added to the table in 7 CFR 354.2:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

Commuted traveltime allowances

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
Add:			
* *	* *	* *	
Louisiana: Lake Charles.	Crowley		3
New Mexico: Columbus.	El Paso, Tex		6
Puerto Rico: Guanica	Ponce		2
Texas:			
Bergstrom AFB	San Antonio		3
Robert Grey Army Airfield.	do		6
* *	* *	* *	

(64 Stat. 561; (7 U.S.C. 2260).)

It is to the benefit of the public that this instruction be made effective at the earliest practicable date. Accordingly, it is found upon good cause, under the administrative procedure provisions of 5 U.S.C. 553, that notice and other public procedure with respect to the foregoing amendment are unnecessary and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

NOTE.—The Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Done at Washington, D.C., this 11th day of May, 1977.

JAMES O. LEE, Jr.,
Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc.77-14023 Filed 5-16-77;8:45 am]

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

BEEF RESEARCH AND INFORMATION

Procedure for Conduct of Referendums

CROSS REFERENCE: For a document establishing procedure for conducting referendums regarding any Beef Research and Information Order, see FR Doc. 77–14021, in the Rules and Regulations Section of this issue.

CHAPTER XI—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS: MISCELLANEOUS COMMODITIES), DEPARTMENT OF AGRICULTURE

PART 1260—BEEF RESEARCH AND INFORMATION

Subpart—Procedure for the Conduct of Referendums in Connection With Beef Research and Information Order

AGENCIES: Agricultural Marketing Service and Agricultural Stabilization and Conservation Service USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the procedure for conducting referendums with respect to any Beef Research and Information Order or amendment issued pursuant to the Beef Research and Information Act. Such a rule is necessary because an order must be approved in a referendum among eligible beef producers before the Order can become effective. It will give beef producers notice of eligibility requirements, registration and voting procedures, challenges of eligibility, and publication of the result of each referendum.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert Cook, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202–447–7998).

SUPPLEMENTARY INFORMATION: The Act provides that the Secretary of Agriculture shall issue a Beef Research and Information Order, or amendments thereto, applicable to producers and slaughterers of cattle to effectuate the delcared policy of the Act. The Act further provides that the Secretary shall conduct a referendum among cattle producers for the purpose of ascertaining whether the issuance of an Order is approved or favored by cattle producers. This procedure for the conduct of referendums is in accordance with the authority vested in the Secretary of Agriculture by the Act.

The proposed rules for conducting referendums were published in the FEDERAL REGISTER on April 15, 1977 (42 FR 19885), and interested persons were invited to submit comments on the proposal by April 30, 1977.

Two changes in the proposed rules were recommended in the comments received. One suggestion was to change the 12-day voting period provided for in § 1260.201(n) to an 11-day voting period in order that the voting period for the forthcoming referendum could be scheduled during a suggested period which included the 4th of July holiday-shortened workweek. Such a change is unnecessary since § 1260.204 provides that Sundays and Federal holidays are counted in the computation of time except where the last day falls on a Sunday or holiday; then the next business day shall be the last day. Also, these rules are applicable not only to the forthcoming referendum but to all referendums held under any order or amendments issued under the Act. Therefore, it would be impractical to include special provisions to accommodate particular situations occurring in different referendums.

It was also recommended that paragraph 1260.207(b) be changed to provide that a list of registered producers be prepared on a daily basis and made available for inspection throughout the registration period in addition to a complete list of registered producers to be prepared after the registration period closes. The recommended change is adopted since it results in a more open registration procedure by making the names of registrants available to the public daily rather than only after the registration period.

The following other changes are also made to clarify or correct provisions in the proposed rules:

Section 1260.202 is added to the rules. It was inadvertently omitted in the proposed rules published for comment. The section outlines responsibilities of the Deputy Administrator, ASCS, State ASC committees, and county ASC committees for conducting referendums. This added section represents no substantive change from the proposal since the duties of the Deputy Administrator and the State and county ASC committees are stated in other provisions elsewhere in the rules.

The wording of § 1260.206(b) is changed to show that proxy registration and voting is not permitted for individual producers.

Section 1260.209(a) is changed by adding a requirement that any challenge of a person's eligibility must be made prior to the end of the voting period. This requirement is necessary to provide adequate time for resolving any challenges or appeals and compiling the final results of the referendum within the limits specified in the rules.

Since this procedure is essentially the same as the proposed rule published April 15, 1977, and an earlier effective date will not impose any additional burden on any person, good cause exists for making the procedure effective on less than 30 days notice.

Accordingly, with these changes and additions, the proposed rules (7 CFR Part 1260) are adopted as set forth below.

Issued at Washington, D.C., this May 11, 1977.

VICTOR A. SENECHAL,
Acting Administrator, Agricultural Stabilization and Conservation Service.

IRVING W. THOMAS,
Acting Administrator, Agricultural Marketing Service.

Subpart—Procedure for the Conduct of Referendums in Connection with Beef Research and Information Order

Sec.

AUTHORITY: (Sec. 17, Pub. Law 94–294, 90 Stat. 537 (7 U.S.C. 2916).)

Subpart—Procedure for the Conduct of Referendums in Connection With Beef Research and Information Order

§ 1260.200 Referendums

Referendums for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a Beef Research and Information Order, or the amendment, continuance, termination, or suspension of such an Order, is favored by producers, shall, unless supplemented or modified by the Secretary, be conducted in accordance with this Subpart.

§ 1260.201 Definitions.

(a) "Secretary" means the Secretary of Agriculture or any other officer or employee of the U.S. Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(b) "ASCS" means the Agricultural Stabilization and Conservation Service.

(c) "Act" means the Beef Research and Information Act (7 U.S.C. 2901 et seq.) and any amendments thereto.

(d) "Deputy Administrator" means the Deputy or Acting Deputy Administrator, Programs, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(e) "State ASC Committee" means the group of persons within a State designated by the Secretary to act as the State Agricultural Stabilization and Conservation committee.

(f) "County ASC Committee" means the group of persons within a county elected to act as the county Agricultural Stabilization and Conservation committee, pursuant to the regulations governing the election and functioning of the county Agricultural Stabilization and Conservation committee.

(g) "County ASCS Executive Director" means the person employed by the county ASC committee to execute the policies of the county ASC committee and be responsible for the day-to-day operation of the county ASCS office, or the person acting in such capacity.

(h) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(i) "Cattle" means live domesticated bovine quadrapeds.

(j) "Producer" means any person who owns or acquires ownership of cattle

other than one who acquires cattle solely for the purpose of slaughter: *Provided,* That a person shall not be considered to be a producer if his only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

(k) "Order" means the Beef Research and Information Order or any amendment thereto promulgated pursuant to the Act with respect to which the Secretary has directed that a referendum be conducted.

(l) "Representative Period" means a consecutive twelve-month period preceding the referendum designated by the Secretary.

(m) "Registration Period" means a 12-day period to be announced for the registration of producers desiring to vote in a referendum. The registration period shall end not less than ten calendar days prior to the first day of the voting period.

(n) "Voting Period" means a 12-day period to be announced for voting in a referendum.

§ 1260.202 Supervision of referendum.

The Deputy Administrator shall be in charge of and responsible for conducting each referendum in accordance with this subpart. Each State ASC committee shall be in charge of and responsible for conducting the referendum in its State. Each county ASC committee shall be responsible for conducting the referendum in its county.

§ 1260.203 Requirements of referendum.

No Beef Research and Information Order or amendment thereto issued under the Act shall become effective unless the Secretary determines (a) that valid ballots were cast by at least 50 percent of the eligible producers registered to vote, and (b) that the issuance of such Order is approved or favored by not less than two-thirds of the producers casting valid ballots in such referendum.

§ 1260.204 Computation of time.

Sundays and Federal holidays shall be included in computing the time allowed for the filing of any documents or taking any action: *Provided,* That when such time expires on a Sunday or a Federal holiday, such period shall be extended to include the next following business day.

§ 1260.205 Public notice.

Advance public notice of the referendum shall be provided without advertising expense by the State and county ASCS offices by means of newspapers, television, county newsletter, county extension agents, etc. Such notice shall announce the registration requirements and other pertinent information.

§ 1260.206 Eligibility.

(a) *Eligible Producer.* Each person who was a producer at any time during the representative period is entitled to register and vote in the referendum. Each producer entity shall be entitled to cast only one ballot in the referendum.

(b) *Proxy Registration and Voting.* Proxy registration and voting is not authorized except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any producer entity (other than an individual producer), such as a corporation or partnership, may register and cast a ballot on behalf of such entity. Any individual registering to vote in the referendum on behalf of any producer entity shall certify that he is authorized by such entity to take such acion.

(c) *Joint and Group Interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation, engaged in the production of cattle as a producer entity shall be entitled to only one vote: *Provided, however,* That any member of a group may register to vote as a producer if he is an eligible producer separate from the group.

§ 1260.207 Registration.

(a) *Registration procedure.* Each producer desiring to vote in the referendum must register during the registration period with the county ASCS office serving the county in which his farm or ranch headquarters is located. An absentee producer who does not have a local headquarters may register and vote in any county where his cattle are located, but shall register and vote in only one such county. To register, a producer must complete a registration card, Form ASCS–151, during the registration period. Registration may be in person or by mail. A producer who wishes to register by mail may request the county ASCS office to mail him a registration card. A registration card shall be considered received during the registration period if (1) it was delivered in person to the county ASCS office prior to the close of business on the final day of the registration period, or (2) it was postmarked not later than midnight of the final day of the registration period, and was received in the county ASCS office prior to the close of business on the fourth day after the close of the registration period.

(b) *List of registered producers.* A list of registered producers shall be prepared and posted daily in a conspicuous public location at the county ASCS office during the registration period. A final list shall be posted on the fifth day after the close of the registration period. The list shall include all persons who submitted a valid registration card in a timely manner.

§ 1260.208 Voting.

(a) *Facilities and ballot box.* Each county ASCS office shall provide (1) adequate facilities and space to permit producers to mark their ballots in secret and (2) a sealed ballot box which shall be kept under observation during office hours and secured at all times until the ballots are counted.

(b) *Voting.* Voting may be in person or by mail. A producer wishing to vote by mail may request the county ASCS office to mail him a ballot. Ballots will be issued only to eligible cattle producers who have registered to vote. Ballots will not be provided nor accepted prior to the voting period. Each registered cattle producer voting shall obtain and cast his ballot on Form ASCS–151A with the county ASCS office where he registered to vote. The ballot shall be marked to indicate "yes" or "no" and must be signed by the producer. Producers voting in person shall place their own ballots in the ballot box. Ballots received by mail shall be placed promptly in the ballot box.

§ 1260.209 Challenge of eligibility.

(a) *Who may challenge.* A person's eligibility to register and vote may be challenged by any person. The county ASCS executive director shall review all registrations and promptly challenge any registrant who appears to be ineligible. Any challenge of a person's eligibility to register and vote must be made prior to the end of the voting period.

(b) *Determinations of challenges.* Any person whose eligibility to register and to vote has been challenged must prove to the satisfaction of the county ASCS executive director that he was a producer during the representative period. Records such as tax returns, sales documents, purchase documents, or other similar documents may be submitted to prove that a person is a producer. The county ASCS executive director shall make his determination concerning the eligibility of a producer who has been challenged as soon as practicable, and in all cases before the opening of the ballot box.

(c) *Challenged ballot.* A person whose eligibility to register or to vote has been challenged but not resolved by the county ASCS executive director or by the county ASCS committee, if on appeal, may be allowed to cast a ballot, but such ballot shall be considered a challenged ballot for the purpose of the referendum until a resolution of the challenge has been made. A challenged ballot shall be determined to have been resolved if no appeal is taken from the determination of the county ASCS executive director within the time allowed for appeal or there has been a determination by the county ASC committee after appeal.

(d) *Appeal.* Appeal from a decision by the county ASCS executive director on the eligibility of a person to register or to vote must be made to the county ASC committee within three business days after notification of such decision. An appeal shall be determined by the county ASC committee as soon as practicable, but in all cases not later than 5 days after the opening of the ballot box.

§ 1260.210 Receiving ballots.

A ballot shall be considered to have been received during the voting period (a) if it was cast in the county ASCS office prior to the close of business on the final day of the voting period, or (b) if mailed, the ballot was postmarked not later than midnight on the final day of the voting period and received in the

county ASCS office prior to the close of business on the fourth day after the close of the voting period.

§ 1260.211 Canvassing ballots.

(a) *Counting the Ballots.* As soon as possible after opening of the county ASCS office on the fifth day after the close of the voting period, employees of the county ASCS office shall open the ballot box and count the ballots. The ballots shall be tabulated as follows: (1) Number of eligible producers casting valid ballots, (2) number of producers favoring the order, (3) number of producers not favoring the order, (4) the number of challenged ballots deemed invalid, and (5) the number of spoiled ballots.

(b) *Spoiled Ballots.* Ballots shall be considered as spoiled ballots when they are unsigned, mutilated, or marked in such a way that it cannot be determined whether it is a "yes" or "no" vote. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(c) *Confidentiality.* All ballots shall be treated as confidential and the contents of the ballots shall not be divulged except as provided for in this Subpart or as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the ballots, but shall remain a reasonable distance from the tabulation so as not to interfere with the tabulation or see how any person voted in the referendum.

§ 1260.212 County ASCS office report.

(a) *Preliminary report.* The county ASCS office shall notify the State ASCS office by telephone, telegraph, or messenger as to the preliminary results of the referendum as soon as possible. Such report shall also include the total number of eligible producers that registered to vote in the referendum. Each county ASCS office may release the unofficial results of the referendum in its county after the report has been given to the State ASCS office.

(b) *Final report.* Within seven days after the opening of the ballot box, each county ASCS office shall transmit a written summary certified by the county ASCS executive director of the final results of the referendum in its county to the State ASCS office. Any appeal concerning a producer's eligibilty shall be resolved by the county ASC committee prior to the date of the final report. A copy of the summary shall be posted for 30 days in the county ASCS office in a conspicuous place accessible to the public and a copy shall be kept on file in the county ASCS office for a period of at least 12 months.

§ 1260.213 State ASCS office report.

(a) *Preliminary report.* Each State ASCS office shall send to the Deputy Administrator by telegraph as soon as possible a summary of the preliminary results of the referendum received from the county ASCS offices within its State. Such report shall also include the total number of eligible producers that registered to vote in the referendum. Each State ASCS office may release the unofficial results of the referendum in its State after its report has been sent to the Deputy Administrator.

(b) *Final report.* Within ten days after the opening of the ballot boxes in the county ASCS offices each State ASCS office shall transmit to the Deputy Administrator a written summary of the final results of the referendum received from the county ASCS offices within the State. Such summary shall be prepared in triplicate and certified by the State ASCS executive director. The orginal and one copy of the summary shall be sent to the Deputy Administrator. One copy of the summary shall be maintained in the State ASCS office where it shall be available for public inspection for a period of not less than 12 months.

§ 1260.214 Results of the referendum.

(a) The Deputy Administrator shall prepare and submit to the Secretary or his designee a report of the results of the referendum. The official results of the referendum shall be published in the FEDERAL REGISTER. State summaries and related papers shall be available for public inspection in the office of the Deputy Administrator, Programs, ASCS, U.S. Department of Agriculture, Room 243-W, Administration Building, Washington, D.C.

(b) If the Deputy Administrator or the Secretary deems it necessary, the report of any State or county shall be reexamined and checked by such persons that may be designated by the Deputy Administrator or the Secretary.

§ 1260.215 Disposition of ballots and records.

The county ASCS executive director shall place the registration cards, list of registrants, eligible voter lists, voted ballots, challenged registration cards and challenged ballots found to be ineligible, spoiled ballots, and county summaries in sealed containers marked with the identification of the referendum. Such records shall be placed under lock in a safe place under the custody of the county ASCS executive director for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Deputy Administrator by the end of such time, the records shall be destroyed.

§ 1260.216 Suspension and termination of order.

The Secretary of Agriculture may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of cattle producers voting in the referendum approving the Order, to determine whether such producers favor the termination or suspension of the Order, and he shall suspend or terminate such Order six months after he determines that suspension or termination of the Order is approved or favored by a majority of the producers voting in such referendum who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production of cattle, and who produced more than 50 percent of the volume of cattle produced by the producers voting in the referendum.

§ 1260.217 Instructions and forms.

The Deputy Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

[FR Doc.77-14021 Filed 5-16-77;8:45 am]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 73—SCABIES IN CATTLE

Release of Area Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Webster County in Nebraska from areas quarantined because of cattle scabies. Surveillance activity indicates that cattle scabies no longer exists in the area quarantined. No areas in the State of Nebraska remain under quarantine.

EFFECTIVE DATE: May 12, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. Glen O. Schubert, Chief Staff Veterinarian, Sheep, Goats, Equine, and Ectoparasites Staff, United State Department of Agriculture, Room 737, 6505 Belcrest Road, Federal Building, Hyattsville, Maryland 20782 (301-436-8322).

SUPPLEMENTARY INFORMATION: This amendment releases a portion of Webster County in Nebraska from the areas quarantined because of cattle scabies. Therefore, the restrictions pertaining to the interstate movement of cattle from quarantined areas contained in 9 CFR Part 73, as amended, will not apply to the excluded area, but the restrictions pertaining to the interstate movement of cattle from nonquarantined areas contained in said Part 73 will apply to the excluded area.

Accordingly, Part 73, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of cattle because of scabies, is hereby amended in the following respect:

§ 73.1a [Amended]

In § 73.1a, paragraph (b) (1) relating to the State of Nebraska is deleted.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111-113, 115, 117, 120, 121, 123-126, 134b, 134f; 37 FR 28464, 28477; 38 FR 19140.)

The amendment relieves restrictions no longer deemed necessary to prevent

the spread of cattle scabies and should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 12th day of May 1977.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

R. I. BROWN,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc.77-14055 Filed 5-16-77;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Docket No. R-0099]

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

Revocation of Certain Previous Delegations Regarding Personnel, Buildings, etc.

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In order to expedite and facilitate performance of certain of its functions, the Board of Governors revokes certain previous delegations regarding personnel matters, building matters, and other miscellaneous delegations.

EFFECTIVE DATE: May 9, 1977.

FOR FURTHER INFORMATION CONTACT:

Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., 20551 (202-452-3257).

SUPPLEMENTARY INFORMATION: The Board of Governors has amended its Rules Regarding Delegation of Authority by revoking certain functions previously delegated to Board members.

The provisions of section 553 of Title 5, United States Code, relating to notice and public participation and deferred effective date, are not followed in connection with the adoption of these amendments, because the changes involved are procedural in nature and do not constitute substantive rules subject to the requirements of that section.

Effective May 9, 1977, 12 CFR 265.1a is amended by deleting paragraph (a) and redesignating paragraphs (b) and (c) as (a) and (b) respectively. (12 U.S.C. 248(k).)

Board of Governors of the Federal Reserve System, May 9, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-14019 Filed 5-16-77;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-13508, IC-9753; File No. S7-654]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Securities Confirmations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: This rule prescribes the delivery and disclosure requirements for confirmation slips sent to customers by brokers and dealers when they buy securities for or from customers or sell securities for or to those customers. The rule describes the situations in which confirmations must be sent and the information they must contain. It revises the confirmation requirements under the federal securities laws to provide investors with fundamental information pertaining to securities transactions consonant with the costs of providing that information.

EFFECTIVE DATE: January 1, 1978, except for paragraphs (b), (c), (d) and (e) as to which the effective date is June 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Jeffrey L. Steele, Esq., Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-8746.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of Rule 10b-10 (17 CFR 240.10b-10) under the Securities Exchange Act of 1934 (the "Act")[1] and the intention to rescind Rule 15c1-4 (17 CFR 240.15c1-4). Rule 10b-10 will make it unlawful for any broker or dealer to effect transactions in securities for or with a customer without making certain written disclosures to that customer.[2]

Rule 10b-10 will become effective on January 1, 1978, with the exception of paragraphs (b), (c), (d) and (e) of the rule, which will become effective on June 1, 1977. Paragraph (b) provides for the optional use of quarterly statements in lieu of immediate confirmations in connection with certain regular investment plans.[3]

The Commission also expects to publish a release shortly setting forth certain proposed revisions to Rule 10b-10 or separate rules relating to, among other things, the provisions contained in Rule 10b-10 as originally proposed, with regard to "riskless principal" transactions, "special remuneration" in connection with principal transactions,[4] and the use of quarterly statements in lieu of immediate confirmations with respect to certain "investment company plans."[5] Those further provisions, together with the provisions adopted today, are expected to supersede Rule 15c1-4 in its entirety and the Commission currently intends to rescind that rule upon taking final action on the proposed additions to Rule 10b-10.

By adopting paragraphs (b), (c), (d) and (e) of Rule 10b-10 effective June 1, 1977, the Commission has sought to afford broker-dealers an immediate opportunity to implement the "periodic plan" provisions of paragraph (b). With respect to confirmations not covered by paragraph (b), however, brokers and dealers are urged to review the amendments to be proposed shortly before making major adjustments in confirmation preparation procedures.

BACKGROUND AND PURPOSE

As the Commission noted in proposing to adopt Rule 10b-10, it has undertaken a general review of the requirements under the federal securities laws which have imposed a duty upon brokers, dealers and municipal securities dealers to make written disclosures to their customers at or before completion of a transaction. The so-called "confirmation requirements" have, for the most part, been contained in section 11(d)(2) of the Act[6] and Rule 15c1-4.[7]

Numerous considerations have led the Commission to undertake a general review at this time. Business practices within the securities industry have been changing or have changed since the development of the basic confirmation requirements. In recent years, for ex-

[1] 15 U.S.C. 78a et seq.

[2] The proposal to adopt Rule 10b-10 was announced in Securities Exchange Act Release No. 12806 (Sept. 16, 1976). See 41 FR 41432 (Sept. 22, 1976) and Investment Company Act Release No. 9450 (Sept. 16, 1976). Interested persons were invited to submit comments, and 31 comment letters were received. Rule 10b-10, as adopted, has been revised for the most part on the basis of the comments received.

[3] See discussion below under Confirmation Delivery Requirements under Rule 10b-10.

[4] See paragraph (a)(3)(ii) of Rule 10b-10 as proposed in Securities Exchange Act Release No. 12806 (Sept. 16, 1976).

[5] See paragraph (d)(3) of Rule 10b-10 as proposed in Securities Exchange Act Release No. 12806 (Sept. 16, 1976).

[6] 15 U.S.C. 78k(d)(2).

[7] See also Securities Exchange Act Rules 15c1-5 and 15c1-6 (17 CFR 240.15c1-5 and c1-6) and *Affiliated Ute Citizens of Utah* v. *United States*, 406 U.S. 128 (1972); *Chasins* v. *Smith, Barney and Co.*, 438 F. 2d 1167 (2d Cir. 1970); and *Cant* v. *A. G. Becker & Co., Inc.*, 374 F. Supp. 36 (N.D. Ill. 1974). Confirmation rules have also been developed by various self-regulatory organizations and their members are required to comply with those requirements as well as with the requirements under the federal securities laws.

ample, broker-dealers and others have sought to attract increased participation by individual investors in the securities markets through regular or periodic investment plans. Employee stock purchase plans, dividend reinvestment plans and systematic plans for the purchase of investment company securities did not exist when the confirmation requirements were originally written.

The securities markets are also undergoing changes and the Securities Acts Amendments of 1975[8] reflect those changes in considerable measure. In enacting the 1975 Amendments, Congress substantially revised the Act to accomplish numerous purposes, including the development of a "national market system." In that connection, the Congress found, among other things, that it was in the public interest and appropriate for the protection of investors to assure fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets[9] and to assure equal regulation of all markets for securities qualified for trading in a national market system and of the brokers and dealers effecting transactions in such securities.[10] In addition, the Congress provided that persons effecting transactions in municipal securities would be subject for the first time to various provisions of the Act and the rules thereunder[11] and mandated the creation of the Municipal Securities Rulemaking Board (the "MSRB") to propose and adopt, subject to Commission approval, rules to effect the purposes of the Act with respect to transactions in municipal securities.[12]

In addition, changes are occurring in the types of market participants acting as intermediaries between investors and the securities markets. Under the federal securities laws, many of those participants are characterized as "brokers," "dealers," "banks" or "investment advisers." At the same time, those who are characterized other than as "borkers" or "dealers" (but who, nonetheless, deal directly with investors) are becoming more integrally involved in the process of effecting transactions in securities. Not all of those persons have been subject to Commission regulation and some have been subject to varying Commission regulation. A person who is a "broker"[13] or "dealer"[14] under the Act is, of course, required to comply with applicable provisions of the Act and the rules thereunder. A person who is characterized as an "investment adviser,"[15] on the other hand, is subject to different regulation. A "bank"[16] is excluded from the statutory definitions of "broker," "dealer" and "investment adviser." A number of commentators drew attention to the variations in the regulatory pattern and made suggestions that the coverage of the confirmation rule be extended. While the Commission has decided at this time to adhere to the traditional pattern of requiring only brokers and dealers to comply with the confirmation rule, it will continue to evaluate confirmation procedures with reference to the fundamental transactional information which should be made available to all investors.

Persons Subject to Rule 10b–10

BROKERS AND DEALERS

Rule 10b–10 applies to brokers and dealers. Section 11(d)(2) has since 1934 required a broker-dealer to disclose whether he has acted as a dealer for his own account or as a broker for the customer or some other person in effecting a transaction,[17] and Rule 15c1–4 has since 1937 imposed disclosure requirements upon brokers and dealers effecting transactions otherwise than on a national securities exchange. Rule 10b–10 will, however, apply regardless of the manner in which a broker-dealer conducts its business or the marketplace where transactions are effected.

MUNICIPAL SECURITIES

In 1976 the Commission amended Rule 15c1–4, effective July 5, 1976, to require a bank municipal securities dealer to disclose whether it has acted as agent or as principal in effecting a transaction in municipal securities.[18] Shortly after that amendment to Rule 15c1–4 became effective and shortly before the Commission proposed Rule 10b–10, the MSRB filed with the Commission a confirmation rule (MSRB rule G–15) to require all brokers, dealers and municipal securities dealers effecting transactions in municipal securities to disclose to their customers information pertaining to each transaction.[19] In proposing to apply Rule 10b–10 to transactions in municipal securities, the Commission called attention to MSRB rule G–15.[20]

Some who commented on Rule 10b–10, including the MSRB, urged the Commission to consider whether it was necessary for Rule 10b–10 to apply to transactions in municipal securities in view of the proposed MSRB confirmation rule. Generally, proposed MSRB rule G–15 would provide for more detailed disclosures relating specifically to the nature of the security being purchased or sold. Certain additional disclosures were, however, required by proposed Rule 10b–10. For example, as proposed, it would have required certain dealers to disclose their mark-up or mark-down (i.e, remuneration) in connection with "riskless" principal transactions. As noted above, the Commission intends to publish shortly revised proposals in that regard.

In urging the Commission to consider whether Rule 10b–10 need apply to transactions in municipal securities, some commentators referred to the expertise of the MSRB and its special role under the Federal securities laws. The MSRB was established by the Commission, at the direction of Congress,[21] to propose and adopt rules to effect the purposes of the Act with respect to transactions in municipal securities effected by brokers, dealers and municipal securities dealers.[22] The legislative history of the 1975 Amendments makes clear the desirability of taking "into account the uniqueness of the (municipal securities) industry,"[23] so long as investors are adequately protected. Accordingly, the Commission has determined to withdraw, at this time, the proposal to provide confirmation requirements applicable to municipal securities transactions in Rule 10b–10. The Commission anticipates that further consideration will be given to applying to the municipal securities markets the types of disclosures included or soon to be proposed for inclusion in Rule 10b–10. All brokers, dealers and municipal securities dealers should recognize that the requirements of Rule 15c1–4(a) remain in effect until January 1, 1978, and should anticipate that a comprehensive confirmation rule applicable to municipal securities will also be in effect by that date.

Confirmation Delivery Requirements Under Rule 10b–10

Paragraph (a) of Rule 10b–10 requires, as did Rule 15c1–4, that a written statement be given or sent to a customer at or

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[8] Pub. L. No. 94–29 (June 4, 1975) (the "1975 Amendments").

[9] See Section 11A(a)(1)(C)(ii) of the Act (15 U.S.C. 78k–1(a)(1)(C)(ii)).

[10] See Section 11A(c)(1)(F) of the Act (15 U.S.C. 78k–1(c)(1)(F)).

[11] See generally Section 15B of the Act (15 U.S.C. 78o–4).

[12] See, e.g., Sections 15B(b)(2) and 15B(c)(1) of the Act (15 U.S.C. 78o–4(b)(2) and (c)(1)).

[13] Section 3(a)(4) of the Act, 15 U.S.C. 78c(a)(4).

[14] Section 3(a)(5) of the Act, 15 U.S.C. 78c(a)(5).

[15] See section 202(a)(11) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–2(a)(11).

[16] Section 3(a)(6) of the Act, 15 U.S.C. 78c(a)(6) and section 206(a)(2) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–2(a)(2).

[17] Section 11(d)(2) applies to any "member of a national securities exchange who is both a dealer, and a broker, (and) any person who both as a broker and a dealer transacts a business in securities through the medium of a member or otherwise."

[18] See Securities Exchange Act Release No. 12468 (May 20, 1976), 41 FR 22820 (1976).

[19] See Securities and Exchange Commission File No. SR–MSRB–76–9. The rules of the MSRB are adopted by the MSRB subject to Commission approval pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)).

[20] See Securities Exchange Act Release No. 12806 (Sept. 16, 1976), 41 FR 41432 (Sept. 22, 1976).

[21] See section 15B(b)(1) of the Act (15 U.S.C. 78o–4(b)(1)).

[22] See section 15B(b)(2) of the Act (15 U.S.C. 78o–4(b)(2)). It is a violation of the Act if a broker, dealer or municipal securities dealer effects a transaction in a municipal security in contravention of a rule of the MSRB. See section 15B(c)(1) of the Act (15 U.S.C. 78o–4(c)(1)). Accordingly, a confirmation rule adopted by the MSRB and approved by the Commission would assume a status under the Federal securities laws that is substantially equivalent to any confirmation rule the Commission may adopt.

[23] Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 48 (1975).

before completion of a transaction. "Customer" and "completion of the transaction" are respectively defined in paragraphs (d)(1) and (d)(2) of the rule.

Proposed Rule 10b–10, however: *Provided,* That in lieu of the written statement required by paragraph (a), a monthly statement could be used in connection with transactions effected pursuant to a "periodic plan" and a quarterly statement could be used with respect to an "investment company plan."[24] The proposals with respect to periodic plans have been modified somewhat in Rule 10b–10 as adopted. The Commission intends to revise the provisions with respect to investment company plans in the release to be published shortly.

PERIODIC PLANS

Proposed Rule 10b–10 defined a "periodic plan" as a customer's written authorization to a broker to purchase or sell for his account a specific security or securities (other than investment company securities), in specific amounts (calculated in security units or dollars), at specific time intervals. That definition has not been substantially altered and appears in paragraph (d)(4) of Rule 10b–10, as adopted.

Some commentators objected to the requirement that transactions effected pursuant to a periodic plan must be agency transactions. It was observed that small transactions, such as those effected for dividend reinvestment plans, may involve odd-lot transactions which some broker-dealers have recently begun effecting on a principal basis. The Commission, however, is concerned that there may be risks to investor protection inherent in further relaxing the confirmation delivery requirements to permit a broker-dealer to effect transactions as a principal (and, therefore, at prices determined by the broker-dealer) without providing for reasonably current reporting to the customer under the confirmation rule.[25]

The Commission was also urged to permit the use of quarterly rather than monthly statements in connection with transactions effected pursuant to a periodic plan. Quarterly statements have been permitted by the Commission in connection with various plans for the purchase of certain investment company shares,[26] and the Commission has revised the rule, as adopted, to permit the use of quarterly statements in connection with periodic plans as well. In addition, Rule 10b–10, as adopted, will permit the delivery of quarterly statements in bulk to a person designated by the customer for distribution to the customer. A similar provision was also previously permitted in the case of purchases of investment company securities pursuant to a "group plan" under Rule 15c1–4, and the Commission has concluded that such a procedure would also be appropriate under a "periodic plan."

INVESTMENT COMPANY PLANS

In 1974, the Commission amended Rule 15c1–4 by adding paragraph (b) to provide for the use of quarterly statements in connection with certain transactions in securities issued by open end investment companies or unit investment trusts registered under the Investment Company Act of 1940 ("investment company securities"). Proposed Rule 10b–10 was drafted to restate the substance of that 1974 amendment. The Commission had, however, received indications that the quarterly procedure was not being used and accordingly solicited comments to assist it in determining what, if any, revisions would be appropriate.[27]

A number of comments confirmed that the quarterly procedure was not being used. A survey by the National Association of Securities Dealers, Inc. (the "NASD") of its members which act as principal underwriters for investment companies indicated that the quarterly statement procedure was not used because of various business problems. For example, many principal underwriters believe that the costs associated with establishing and maintaining dual confirmation systems (e.g., segregating those accounts for which a quarterly statement could be used), exceed the possible cost savings. Some also believed that for business reasons immediate confirmations were generally preferable. On the other hand, some who commented directly on proposed Rule 10b–10 and some who responded to the NASD survey indicated that various requirements contained in Rule 15c1–4 (and proposed Rule 10b–10) unnecessarily restricted the use of quarterly statements.

As noted above, the Commission intends to propose revised requirements with respect to the use of quarterly statements for investment company plans; and until such new requirements are proposed and finally adopted, the provisions of Rule 15c1–4(b) will continue in effect.

SUMMARY OF DISCLOSURE REQUIREMENTS UNDER RULE 10b–10

As now adopted, Rule 10b–10 provides for the written disclosure of certain material information[28] pertaining to a transaction effected by a broker or dealer for or with a customer. The rule is structured to require different disclosures depending upon whether the broker-dealer has acted as agent or as principal in effecting transactions.

DISCLOSURES TO BE MADE BY ALL BROKERS AND DEALERS

Paragraph (a)(1) of the rule requires disclosure of the capacity in which a broker or dealer acts in effecting a transaction. Since, in some instances, a broker may act as agent for someone other than the customer to whom the confirmation is to be sent, the rule has been revised to reflect that fact.

Paragraph (a)(2) of the rule requires disclosure of the date and time of the transaction (or the fact that the time of the transaction will be furnished upon request) and the identity, price and number of shares or units (or principal amount) of the security purchased or sold by the customer.[29]

TIME OF A TRANSACTION

A number of comments were received with regard to the existing requirement in Rule 15c1–4 that the time of the transaction be disclosed or made available upon request and the modification of that requirement proposed in Rule 10b–10. Time of a transaction was argued not to be material in the context of transactions in debt securities generally or in the context of certain transactions in securities issued by investment companies. Also the Commission was urged to clarify the meaning of "time of a transaction."

With respect to transactions in debt securities, the Commission believes that the time of a transaction may on occasion be of sufficient materiality to warrant its disclosure upon request and, since the time of a transaction is required to be maintained under Commission and MSRB recordkeeping rules,[30] there appears to be little burden created solely

[24] As the Commission noted in proposing Rule 10b–10, the rule is not intended to require a broker dealing with the trustee of a plan to deliver statements to plan participants where the trustee is the shareholder of record of the securities being purchased or sold. Paragraph (a) of the rule would require such a broker only to deliver a confirmation to the plan trustee.

[25] These considerations do not appear to apply equally to "investment company plans" as defined in paragraph (d)(3) of proposed Rule 10b–10.

[26] See Rule 15c1–4(b).

[27] See Securities Exchange Act Release No. 11025 (Sept. 24, 1974), 39 FR 35345 (Oct. 1, 1974).

[28] The rule does not attempt to set forth all possible categories of material information to be disclosed by broker-dealers in connection with a particular transaction in securities. Rule 10b–10 only mandates the disclosure of information which can generally be expected to be material. Of course, in particular circumstances, additional information may be material and disclosure may be required. See, e.g., Securities Exchange Act Rules 15c1–5 and 15c1–6.

[29] As proposed, Rule 10b–10 would have required disclosure of "title" rather than "identity" of the security. Some commentators believed that the term "title" suggested that broker-dealers must employ the full corporate title as set forth in the issuer's certificate of incorporation or debt instrument. It was suggested that the term "identity" would allow greater flexibility without sacrificing the purpose of the disclosure, and the Commission has accepted that suggestion.

[30] See Securities Exchange Act Rule 17a–3(a) (6) and (7) (17 CFR 240.17a–3(a) (6) and (7)). See also MSRB rule G–8.

by advising customers that information on time is available on request.[21]

With respect to time of a transaction generally, it was suggested that Rule 10b–10 should be drafted to conform to the requirements of the Commission's recordkeeping rule, Rule 17a–3 (17 CFR 240.17a–3). That rule generally requires brokers and dealers to maintain a record of the "time of execution" of a transaction "to the extent feasible."[22] The Commission believes that the confirmation and recordkeeping requirements do not in fact differ with respect to the time of a transaction and paragraph (d) (3) of Rule 10b–10 defines the phrase "time of a transaction" to reflect that view.

PRICE OF A SECURITY

In proposing Rule 10b–10, the Commission noted that, under certain circumstances, it was not thought to be inappropriate for broker-dealers to send confirmations which reflect the average price where an order has been effected in several transactions.[23] For example, it was observed that a person exercising investment discretion with respect to several different accounts may decide to purchase or sell a particular security for one or more of such accounts. Because a substantial block may be involved, the purchase or sale of the security for all such accounts may be effected in several transactions over a reasonable period of time and, therefore, at varying prices. The question then arose as to whether the person exercising investment discretion should seek some basis for allocating particular purchases and sales to particular accounts, even though the investment decision for all such accounts was made simultaneously, or whether all such accounts would be more appropriately treated pari passu by attributing to each account an average price paid or realized for the series of transactions required to effect the overall purchase or sale. Under the circumstances described, it generally would not appear inappropriate for a broker to prepare and send confirmations which reflect the average price while making appropriate disclosures as to the overall series of transactions.

While several commentators suggested that a specific procedure be prescribed in the text of Rule 10b–10, it could be that any such formalization of the procedure might, at this juncture, prove premature and overly restrictive. Nevertheless, the Commission concurs generally with the view that an average price confirmation procedure would not be inappropriate (and would not in and of itself raise questions under either Rule 15c1–4 or Rule 10b–10) when (1) the order has been placed by a person known to the broker to have investment discretion with respect to the customers on whose behalf the order has been given, (2) the order is executed on an agency basis, and (3) the confirmations disclose that the price stated is an average price and that the actual transactional data is available on request.[24]

DISCLOSURES BY A BROKER-DEALER ACTING AS AGENT

Paragraph (a) (3) of Rule 10b–10 requires any broker-dealer effecting transactions in an agency capacity to make certain additional disclosures. As described below, the Commission has made certain technical revisions to this paragraph of Rule 10b–10.

OTHER PARTIES TO A TRANSACTION

Paragraph (a) (3) (i) requires disclosure of the name of the person from whom the security was purchased or to whom it was sold for the customer or that such information is available on request. In cases where a broker effects a transaction for a customer with another broker-dealer (who may in turn have been representing a third party) the rule requires disclosure of the name of that broker-dealer and does not obligate a broker to obtain information as to the capacity in which another broker-dealer was acting or the identity of any third party.

REMUNERATION

Paragraph (a) (3) (ii) of the Rule requires disclosure of the remuneration to be paid by the customer, and paragraph (a) (3) (iii) requires disclosure of the source and amount of any other remuneration[25] to be received by the broker in connection with the transaction. Paragraph (a) (3) (iii), however, alternatively permits, in most instances, a broker to state that the source and amount of other remuneration is available on request. As proposed, the alternative was subject to the proviso that the broker was not exercising investment discretion (as defined by section 3(a) (35) of the Act[26]) on behalf of such customer, or in the case of a purchase was not participating in a distribution, or in the case of a sale was not participating in a tender offer in connection with the transaction. A number of comments were received concerning the requirement to disclose on the confirmation the source and amount of remuneration in those three situations. While one commentator called the proposal a "sensible accommodation of competing considerations," others asserted that the source and amount of other remuneration should be required to be disclosed only on request regardless of the circumstances surrounding the transaction.

In proposing Rule 10b–10, the Commission noted that a number of persons had stated that there were practical difficulties in reporting on a confirmation the source and amount of remuneration paid or to be paid by someone other than the customer receiving the confirmation. At the same time, the Commission observed that dual agency representation presents a potential for abuse since there is a prima facie problem in representing fairly the rights of parties having conflicting interests. The three situations covered by the proviso represent either situations of special trust and confidence (where the broker is exercising investment discretion) or situations (distributions and tender offers) where the remuneration to be received may be anticipated, in many cases, to be substantially larger than might be customary in typical brokerage transactions, in which the difficulties inherent in a dual agency may be substantially less. Some commentators stated that the meanings of the terms "distribution" and "tender offer" were not clearly defined under the federal securities laws and that in any event other remuneration may be disclosed in a prospectus or other documents delivered to a customer.[27]

One alternative would be to rely solely on the general agency disclosure requirement with respect to source and amount of other remuneration set forth in Rule 15c1–4 since 1937. Nevertheless in view of the strong representations that have been made as to the administrative difficulties involved in providing disclosure

[21] With respect to investment company securities, it was observed that for those securities which are priced pursuant to Rule 22c–1 (17 CFR 270.22c–1) under the Investment Company Act of 1940, 15 U.S.C. 80a et seq., time (as opposed to date) of a transaction is not relevant. That rule requires pricing to be based on net asset value computed not less frequently than once daily as of the time of the close of trading on the New York Stock Exchange. With respect to the securities of investment companies the price of which is calculated pursuant to Investment Company Act Rule 22c–1, "time of transaction" for purposes of Rule 10b–10 may be treated as the time at which the price is required to be computed.

[22] See also Securities Exchange Act Release No. 3040 (Oct. 13, 1941), where it is stated, "the phrase 'to the extent feasible' was intended to be applicable only in exceptional circumstances where it might be actually impossible to determine the exact time of execution."

[23] See Securities Exchange Act Release No. 12806 (Sept. 16, 1976).

[24] See Kidder, Peabody & Co. Incorporated (available April 18, 1976).

[25] Questions were raised as to disclosure of remuneration where a transaction might be viewed as having multiple parties. For example, if the broker represented a seller offering 1,000 shares of a security and also represented two purchasers who each decided to purchase 500 shares of that security would it be necessary to disclose to each purchaser the compensation received from the other? In those circumstances, viewed solely from the perspective of one of the purchasers, it would be appropriate to consider the other purchaser to have effected a separate transaction. That conclusion could not, of course, be reached with respect to the seller who, in the example given, participated in both transactions.

[26] 15 U.S.C. 78c(a) (35).

[27] The term "distribution," of course, appears in other disclosure rules; see, e.g., Securities Exchange Act Rule 15c1–6.

of the type required by Rule 15c1–4,[38] the Commission has attempted to reach an accommodation that both permits the broker-dealer community to achieve greater efficiencies in transacting and adequately protects investors. Accordingly, the basic thrust of the proviso to paragraph (a)(3)(iii) has been retained, but some modifications have been made.

As adopted, Rule 10b–10 permits the broker to state on the confirmation that the source and amount of other remuneration is available on request except in two situations. When the customer has purchased the security in a transaction which is part of a distribution in which the broker is participating or when the customer has sold the security in response to a tender offer in which the broker is acting as a so-called "soliciting dealer," Rule 10b–10 requires disclosure of the source and amount of any remuneration received from any person.

The disclosure requirement in the case of transactions on behalf of an account over which the broker exercises investment discretion has been deleted in large part because the circumstances which are most likely to raise questions concerning a broker's impartiality, regardless of whether he is exercising investment discretion, would appear to occur in the case of distributions and tender offers.[39]

While the proviso, even as modified, may not provide the definiteness sought by many commentators, it does permit substantial additional flexibility as compared to the requirements of Rule 15c1–4. On the one hand, in the case of ordinary brokerage transactions, no disclosure on the confirmations is required as to the remuneration paid by the other side. On the other hand, in the case of a transaction effected as part of a "special offering," [40] or otherwise involving special selling efforts, it is apparent that disclosure is required.[41] The Commission anticipates that the proviso in modified form could substantially solve the asserted practical problems encountered in casual trading without creating unnecessary risks to investor protection.[42]

DISCLOSURES BY A BROKER-DEALER ACTING AS PRINCIPAL

Paragraph (a)(3)(ii) of Rule 10b–10, as originally proposed, set forth various disclosures to be made by any broker, dealer, or municipal securities dealer effecting a transaction, as principal, with a customer. The Commission has determined not to retain those requirements in the form proposed in Rule 10b–10 as adopted. In light of certain of the comments received, however, the Commission currently intends to revise certain of those proposals and to republish them.

MISCELLANEOUS MATTERS

CUSTOMER REQUESTS FOR INFORMATION

Various provisions of Rule 10b–10, as proposed and as adopted, offer broker-dealers the option of disclosing certain information on the confirmation or stating thereon that the information is available on request. As proposed Rule 10b–10 would have required such requests to be answered within five business days. A number of persons stated that the rule should be more specific as to how and when requests are to be made and that under some circumstances five days would not be sufficient time to answer, particularly if the request related to a transaction that occurred a month or more before the request.

In response to the comments received, the Commission has modified somewhat the requirements for customer requests for information. Paragraph (c) of the rule, as adopted, provides that a broker-dealer shall give or send requested information to a customer within five business days of the receipt of information except in the case of requests for information pertaining to a transaction effected more than 30 days before the request; in that case, the response must be given or sent within 15 business days. Furthermore, the rule generally specifies that requests for information should be written (although broker-dealers may, of course, respond to oral requests if they wish to do so).

REQUESTS FOR EXEMPTIONS

Several commentators briefly discussed circumstances under which the confirmation delivery or disclosure requirements, as set forth in proposed Rule 10b–10, might be further modified. For example, one commentator suggested that simplified confirmation requirements could be appropriate in connection with transactions in "money market" investment company securities. Money market investment companies permit investors to place funds, not otherwise invested, in securities on a short term basis. Some investors may, for example, desire to invest, on an automatic basis, the proceeds from the sale of securities in a money market investment company pending a determination on long term reinvestment. The Commission believes that the commentators may be correct in suggesting that there could be a basis, in very limited circumstances, for making particular adjustments to the requirements of Rule 10b–10. The Commission does not, however, currently believe it would be appropriate to attempt to anticipate all such circumstances in drafting Rule 10b–10. A new paragraph (e) has, however, been inserted in the Rule to provide that the Commission may exempt any broker or dealer from the requirements of Rule 10b–10 with respect to specified transactions or classes of transactions. Paragraph (e) is not intended to supplant the Commission's interpretive or no-action procedures; it is intended to provide an opportunity to make adaptations in the general provisions of Rule 10b–10 in limited circumstances and upon the substitution of alternative procedures which are adapted to implement adequately the investor protection purposes of the rule.

STATUTORY BASIS

The Securities and Exchange Commission acting pursuant to the Act, and particularly sections 3, 9, 10, 11, 15, 17,

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[38] On several occasions, since early 1975, some commentators have suggested that those difficulties arose with the final elimination of minimum commission rates for exchange transactions. Though brokerage commissions for most exchange transactions were theoretically fixed by exchange rules until May 1, 1975, they were, nevertheless, subject to a practical process of negotiation. See, e.g., Securities Exchange Act Release Nos. 11093 (Nov. 8, 1974) and 11293 (Jan. 23, 1975), 40 FR 7403 (Feb. 20, 1975). Of course, Rule 15c1–4 only made explicit, in large part, general disclosure principles with respect to dual agency transactions effected in the over-the-counter market rather than exchange transactions. Because in many instances brokerage commissions for over-the-counter transactions were parallel to those for exchange transactions, it was frequently possible to rely on a blanket statement, to comply with Rule 15c1–4, that a "like" commission was charged the other party. Rule 10b–10 reflects, nevertheless, an effort to accommodate administrative problems but also reflects a view that, in some situations, information as to the commission charged on the other side of a cross is of sufficient importance to the customer to justify the expenditure of the time and effort required.

[39] Experience with Rule 10b–10 and other proposals (see, e.g., proposed Rule 206(3)–2 under the Investment Advisers Act of 1940, Investment Advisers Act Release No. 557 (Dec. 2, 1976)) may assist the Commission in analyzing concerns in this area. See also Investment Advisers Act Release No. 581 (Apr. 20, 1977), extending temporary Rule 206A–1 until April 30, 1978.

[40] See, e.g., New York Stock Exchange Rule 391.

[41] "[T]he term distribution is not defined either in the Securities Act of 1933 or in the Securities Exchange Act of 1934 and its meaning and applicability to particular persons in each context should be derived from the differing purposes for which it is used." Matter of Collins Securities Corporation, Securities Exchange Act Release No. 11766 (Oct. 23, 1975). In the context of Rule 10b–10, "a distribution is to be distinguished from ordinary trading transactions and other normal conduct of a securities business upon the basis of the magnitude of the offering and particularly upon the basis of the selling efforts and selling methods utilized." Bruns, Nordeman & Co., 40 SEC 652, 660 (1961). See also 3 Loss, Securities Regulation 1478, 1597 (1961); 6 Loss, Securities Regulation 3673, 3766 (1969); Weiss, Registration and Regulation of Brokers and Dealers 113 (1965).

A number of commentators noted that transactions in connection with distributions, particularly in the case of offerings registered under the Securities Act of 1933, were frequently structured as principal transactions, and, in those cases, dual agency disclosure requirements would not apply. Of course, in the case of offerings registered under the Securities Act of 1933, the final prospectus delivered to the customer should generally set forth the information required by the proviso with respect to source and amount of remuneration. Similarly, tender forms customarily set forth information with respect to fees proposed to be paid to brokers acting as "soliciting dealers." In such situations the information specified in the proviso need not be separately set forth on the confirmation.

[42] Should experience prove to the contrary, however, the provisions of Rule 15c1–4 could be reinstated.

and 23 thereof (15 U.S.C. 78c, 78i, 78j, 78k, 78o, 78q, and 78w), hereby adopts § 240.10b–10 of Title 17 of the Code of Federal Regulations effective January 1, 1978, with the exception of paragraphs (b), (c), (d), and (e), which will be effective on June 1, 1977. The revisions made in § 240.10b–10 as originally proposed are either technical in nature or make less restrictive existing or proposed requirements; accordingly, the Commission finds, pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.), that further notice and public procedure are not necessary. The Commission is providing for less than the normal 30-day delay in effectiveness of paragraphs (b), (c), (d), and (e) of the rule in view of the absence of objections to the confirmation relief proposed to be afforded under paragraph (b) and in order to allow brokers an earlier opportunity to begin offering periodic plans under the provisions adopted today.

The Commission also finds that adoption of Rule 10b–10's revised confirmation disclosure and delivery requirements should reduce burdens on competition by making confirmation disclosure requirements applicable to brokers and dealers more uniform and by making available to brokers a simplified confirmation procedure in connection with periodic plans. Furthermore, the Commission finds that to the extent those requirements impose a burden on competition such burdens are necessary and appropriate in furtherance of the purposes of the Act. The timely disclosure to investors of material information affords investors an opportunity to insure that brokers and dealers appropriately carry out obligations to their customers under the federal securities laws.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MAY 5, 1977.

17 CFR Part 240 is amended by adding new Section 240.10b–10 as follows:

§ 240.10b–10 Confirmation of transactions.

(a) It shall be unlawful for any broker or dealer to effect for or with the account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing

(1) Whether he is acting as agent for such customer, as agent for some other person, as agent for both such customer and some other person, or as principal for his own account; and

(2) The date and time of the transaction (or the fact that the time of the transaction will be furnished upon written request of such customer) and the identity, price and number of shares or units (or principal amount) of such security purchased or sold by such customer; and

(3) If he is acting as agent for such customer, for some other person, or for both such customer and some other person,

(i) The name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that such information will be furnished upon written request of such customer; and

(ii) The amount of any remuneration received or to be received by him from such customer in connection with the transaction unless remuneration paid by such customer is determined, pursuant to a written agreement with such customer, otherwise than on a transaction basis; and

(iii) The source and amount of any other remuneration received or to be received by him in connection with the transaction: *Provided, however,* That if, in the case of a purchase, the broker was not participating in a distribution, or in the case of a sale, was not participating in a tender offer, the written notification may state whether any other remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of such customer.

(b) A broker or dealer may effect transactions for or with the account of a customer without giving or sending to such customer the written notification described in paragraph (a) of this section (until January 1, 1978, § 240.15c1–4 (a)) if:

(1) Such transactions are effected pursuant to a periodic plan; and

(2) Such broker or dealer gives or sends to such customer within five business days after the end of each quarterly period a written statement disclosing each purchase or sale, effected for or with, and each dividend or distribution credited to, or reinvested for, the account of such customer (pursuant to the plan) during the period; the date of each such transaction; the identity, number and price of any securities purchased or sold by such customer in each such transaction; the total number of shares of such securities in such customer's account; any remuneration received or to be received by the broker or dealer in connection therewith; and that any other information required by paragraph (a) of this section will be furnished upon written request: *Provided, however,* That the quarterly written statement may be delivered to some other person designated by the customer for distribution to the customer.

(c) A broker or dealer shall give or send to a customer information requested pursuant to this rule within five business days of receipt of the request: *Provided, however,* In the case of information pertaining to a transaction effected more than 30 days prior to receipt of the request, the information shall be given or sent to the customer within 15 business days.

(d) For the purposes of this rule,

(1) "Customer" shall not include a broker or dealer;

(2) "Completion of the transaction" shall have the meaning provided in Rule 15c1–1 under the Act;

(3) "Time of the transaction" means the time of execution, to the extent feasible, of the customer's order;

(4) "Periodic plan" means any written authorization for a broker acting as agent to purchase or sell for a customer a specific security or securities (other than securities issued by an open end investment company or unit investment trust registered under the Investment Company Act of 1940), in specific amounts (calculated in security units or dollars), at specific time intervals and setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them).

(e) The Commission may exempt any broker or dealer from the requirements of paragraphs (a) and (b) of this section with regard to specific transactions or specific classes of transactions for which the broker or dealer will provide alternative procedures to effect the purposes of the section; any such exemption may be granted subject to compliance with such alternative procedures and upon such other stated terms and conditions as the Commission may impose.

[FR Doc.77–13958 Filed 5–16–77;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 77–136]

INSPECTION, SEARCH, AND SEIZURE

Customs Regulations Amended

AGENCY: United States Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This rule sets forth Customs policy that unless required by law merchandise should only be seized for Customs violations in those situations in which seizure is necessary to protect the revenue of the United States. A monetary penalty shall be the remedy for violations of laws enforced by Customs unless it is determined that seizure is necessary. These amendments are needed to clarify those situations in which a monetary penalty should be assessed against the violator rather than seizing the merchandise.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Marvin M. Amernick, Attorney, Regulations and Legal Publications Division, 1301 Constitution Avenue NW., United States Customs Service, Washington, D.C. 20229 (202–566–8237).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 162.21(a) of the Customs Regulations (19 CFR 162.21(a)) provides that any Customs officer having reasonable cause to believe that any law enforced by the Customs Service has been

violated, making any property subject to forfeiture, shall seize such property if available.

While certain provisions of the Tariff Act of 1930, as amended, require seizure of merchandise for violations, other provisions authorize the forfeiture of either the merchandise or its value. For example, under the provisions of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), the entry, or attempted entry, of merchandise into the commerce of the United States by means of any false declaration subjects the merchandise or its value to forfeiture. Seizure of merchandise is not required; a claim for its value may be made.

Section 148.19 of the Customs Regulations (19 CFR 148.19) provides that a passenger who makes any false statement or engages in other conduct which causes a Customs officer to pass an article free of duty or at less than the proper amount of duty has violated section 592. Therefore, except as otherwise provided, the article involved must now be seized if it is available and seizure is practicable. If the article is not available for seizure or if seizure is impracticable, the domestic value of the article shall be demanded from the passenger.

Likewise, § 162.41(a) of the Customs Regulations (19 CFR 162.41(a)), provides that when merchandise or the value thereof is subject to forfeiture, the district director may elect to seize the merchandise or assess a claim for its domestic value. However, if the merchandise is in the possession of an innocent purchaser, it shall not be seized. In such cases, or when the merchandise is not available for seizure, the district director shall proceed to recover the domestic value of the merchandise.

The United States Customs Service is aware that seizure of property may be an unnecessarily harsh action. Seizure of merchandise may place an importer in the position of being unable to continue his business, or of breaching his contractual commitments with his customers causing him unwarranted financial losses.

Recognizing the possible consequences that seizure of property may have in circumstances where absolutely prohibited importations are not involved, it is the position of the United States Customs Service that unless required by law, property should only be seized when it is necessary to protect the revenue.

In order to clearly set forth Customs policy in this regard, it has been determined that § 162.21(a) of the Customs Regulations should be amended to provide for assessment of a monetary penalty unless it is determined that seizure is necessary to protect the revenue. The revised language will remove any possible inference that this regulation compels seizure in all cases where the property that is subject to forfeiture is available for seizure.

Section 148.19 of the Customs Regulations is also amended to establish that in cases where a passenger violates section 592 of the Tariff Act, the article which is the subject of the violation shall be seized only if certain conditions are met. As amended, § 148.19 will include a reference to subparagraph (3) of § 162.41(a), which is being added to the regulations to specify the appropriate circumstances for seizure.

The amendment to § 162.41(a) of the Customs Regulations provides that merchandise shall only be seized when the district director is satisfied that the violator appears to be insolvent or may soon become insolvent, the violator or his assets appear to be beyond the jurisdiction of the United States, or, for some other reason, a claim for the domestic value of the merchandise would not protect the revenue.

Because these amendments merely state general policy and impose no additional requirements on the public, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of these regulations was Marvin M. Amernick, Attorney, Regulations and Legal Publications Division of the Office of Regulations and Rulings, United States Customs Service, Washington, D.C. 20229. However, personnel from other offices of the Customs Service participated in their development, both on matters of substance and style.

AMENDMENTS TO THE REGULATIONS

Sections 148.19, 162.21, and 162.41 of the Customs Regulations (19 CFR 148.19, 162.21, 162.41) are amended in the following manner:

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The second and third sentences of § 148.19 are amended to read as follows:

§ 148.19 False or fraudulent statement.

* * * In any such case the article involved shall be seized only if one or more of the conditions set forth in § 162.41(a) (3) of this chapter are present, if it is available for seizure at the time the violation is detected, and if such seizure is otherwise practicable, unless the article is in the possession of an innocent holder for value who has full right to possession as against any party to the Customs violation. If seizure is not made, the domestic value of the article, determined in accordance with section 606, Tariff Act of 1930, as amended (19 U.S.C. 1606), shall be demanded from the passenger. * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 162—INSPECTION, SEARCH, AND SEIZURE

2. Section 162.21(a) is amended to read as follows:

§ 162.21 Responsibility and authority for seizures.

(a) *Seizures by Customs officers.* Except as provided for in § 162.41(a), any Customs officer having reasonable cause to believe that any law enforced by the Customs Service has been violated, making any property subject to forfeiture, shall seize such property if available.

3. Section 162.41(a) is amended to read as follows:

§ 162.41 Merchandise entered by false invoice, declaration, other document or statement, subject to forfeiture.

(a) *Election to proceed against merchandise or value when forfeiture incurred.* (1) When merchandise or the value thereof is subject to forfeiture under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), including any article seized under the provisions of section 499, Tariff Act of 1930, as amended (19 U.S.C. 1499), the district director may elect to proceed against the merchandise or its domestic value.

(2) If the merchandise is in the possession of an innocent purchaser, it shall not be seized. In such cases, or when the merchanise is not available for seizure, the district director shall proceed to recover the domestic value.

(3) Merchandise shall only be seized if the district director is satisfied that:

(i) The violator appears to be insolvent or may soon become insolvent;

(ii) The violator or his assets appear to be beyond the jurisdiction of the United States; or

(iii) For some other reason, a claim for the domestic value of the merchandise would not protect the revenue.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

VERNON D. ACREE,
Commissioner of Customs.

Approved: May 9, 1977.

BETTE B. ANDERSON,
Under Secretary.

[FR Doc.77-14072 Filed 5-16-77;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 75N-0120]

PART 169—FOOD DRESSINGS AND FLAVORINGS

Mayonnaise, French Dressing, and Salad Dressing Standards Revision; Confirmation of Effective Date

AGENCY: Food and Drug Administration (FDA).

ACTION: Rule.

SUMMARY: This document confirms the effective date of a final regulation, published in the FEDERAL REGISTER of May 26, 1976 (41 FR 21444), revising the standards of identity for mayonnaise, french dressing, and salad dressing to provide for label declaration of ingredients, to allow the use of functional classes of safe and suitable ingredients that would not modify the fundamental characteristics of the foods, and to re-

vise and update the format of the standards.

EFFECTIVE DATE: January 1, 1978, for all products initially introduced into interstate commerce on or after this date. Voluntary compliance, including any labeling changes required: July 26, 1976.

FOR FURTHER INFORMATION CONTACT:

Eugene T. McGarrahan, Bureau of Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204 (202-245-1155).

SUPPLEMENTARY INFORMATION: The May 26, 1976 final regulation provided that any person who would be adversely affected by the amendments to §§ 169.115, 169.140, and 169.150 (21 CFR 169.115, 169.140 and 169.150, formerly §§ 25.2, 25.1, and 25.3 respectively, prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)) could at any time, on or before June 25, 1976, file written objections and, if desired, request a hearing on the specific provisions objected to. Five objections were filed, one from a consumer and four from industry. None of the objections were accompanied by a request for a hearing.

1. *Use of food additives.* One objection was to the use of food additives and ingredients other than vegetable oils, acids, egg ingredients, salt, and spices in salad dressing. Furthermore, the objection questioned the safety and necessity of the use of other ingredients.

The Commissioner of Food and Drugs advises that the salad dressing defined by the standard of identity under § 169.150 is traditionally a thick, whitish-colored dressing similar in appearance to mayonnaise, but having an entirely different flavor. Lower fat content and a starch ingredient further differentiate salad dressing from mayonnaise. The specific objection was to the use of starch in salad dressing. The Commissioner points out that starch is a characterizing ingredient in salad dressing and that starch, along with the other ingredients provided for, is necessary to obtain the traditional product recognized by consumers. Furthermore, only "safe and suitable" ingredients, as defined in § 130.3 (d) (21 CFR 130.3(d), formerly § 10.1(d) prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), that perform appropriate functions may be used in salad dressing. The Commissioner therefore concludes that it is neither practical nor necessary to limit further the ingredients that may be used in salad dressing.

2. *Cooked or partly cooked starchy paste.* Three objections pointed out that the Commissioner had not dealt fully with the comment on the proposal concerning "safe and suitable thickeners" in salad dressing (§ 169.150). These objections acknowledge the fact that the starchy paste is a characterizing ingredient, but request that the requirement that it be either cooked or partly cooked be dropped. These objections cite advances in starch technology and the development of pregelatinized starch that does not require cooking as reasons for eliminating this requirement.

The Commissioner acknowledges that in dealing with the main issue in the original comment, i.e., whether or not to allow the use of safe and suitable thickening agents in salad dressing, consideration should have been given to the request that the cooking requirement be eliminated from the standard. Upon reviewing these objections, the Commissioner agrees that the cooking requirement is unduly restrictive and has dropped it from the standard, as reflected below.

3. *Labeling of artificial colors.* One objection was to the Commissioner's contention that paprika and oleoresin of paprika, when used in french dressing (§ 169.115), need not be declared as "artificial coloring." The objection maintains that requiring β-apo-8'-carotenal to be declared as "artificial color" but not requiring paprika and oleoresin of paprika to be declared as "artificial color" when they clearly impart a color to french dressing that is not otherwise present, subjects products containing β-apo-8'-carotenal to an unfair competitive disadvantage.

The Commissioner acknowledges that his statement concerning the correct label declaration of paprika or oleoresin of paprika, added to french dressing for the sole purpose of imparting color, was erroneous. When either of these ingredients is added only to provide color to the food, its presence must be declared as "artificial color" or "artificial coloring" in accordance with § 101.22(a)(4) (21 CFR 101.22(a)(4), formerly § 1.12(a)(4) prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)) and § 70.3(f) (21 CFR 70.3 (f), formerly § 8.1(f) prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)). Paprika and oleoresin of paprika may be added solely for flavoring purposes, but used in this way they still impart color to the food. In this instance, these ingredients must be declared on the label as either "spice and coloring" or by their common or usual names, "paprika" or "oleoresin of paprika", in accordance with § 101.22(a)(2).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 371)) and under authority delegated to the Commissioner (21 CFR 5.1), notice is given that the objections filed to the final regulation revising the standards for dressings for foods under §§ 169.115, 169.140 and 169.150 are not accepted as valid, except that, in accordance with the foregoing: *It is ordered*, That § 169.150, as promulgated in the FEDERAL REGISTER of May 26, 1976 (41 FR 21444), be amended by revising paragraph (a) to read as follows:

§ 169.150 Salad dressing.

(a) *Description.* Salad dressing is the emulsified semisolid food prepared from vegetable oil(s), one or both of the acidifying ingredients specified in paragraph (b) of this section, one or more of the egg yolk-containing ingredients specified in paragraph (c) of this section, and a starchy paste prepared as specified in paragraph (d) of this section. One or more of the ingredients in paragraph (e) of this section may also be used. The vegetable oil(s) used may contain an optional crystallization inhibitor as specified in paragraph (e)(8) of this section. All the ingredients from which the food is fabricated shall be safe and suitable. Salad dressing contains not less than 30 precent by weight of vegetable oil and not less egg yolk-containing ingredient than is equivalent in egg yolk solids content to 4 percent by weight of liquid egg yolks. Salad dressing may be mixed and packed in an atmosphere in which air is replaced in whole or in part by carbon dioxide or nitrogen.

* * * * *

Effective date: Compliance with the final regulation, including any labeling changes required, may have begun on July 26, 1976, and all products initially introduced into interstate commerce on or after January 1, 1978, shall fully comply.

(Sec. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 371))

Dated: May 11, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-13996 Filed 5-16-77;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Corrected S.O. No. 1249; Amdt. 2]

PART 1033—CAR SERVICE

Octoraro Railway, Inc., Authorized To Operate Over Portion of USRA Line No. 142, Former Octoraro Branch of Penn Central Transportation Co.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amendment No. 2 to Service Order No. 1249).

SUMMARY: This amendment extends for six months authority given the Octoraro Railway, Inc., to operate approximately 36.2 miles of railroad extending southwest from Wawa, Pennsylvania, to the Maryland-Pennsylvania state line in the vicinity of Sylmar. Service on this line was discontinued April 1, 1976, under authority of the Regional Railroad Reorganization Act of 1973 and the Railroad Revitalization and Railroad Reform Act of 1976. The line has since been purchased by an agency of the Common-

wealth of Pennsylvania. The Commonwealth has designated the Octoraro Railway, Inc., as its agent for the operation of this line. An application for permanent authority for the Octoraro Railway to operate this line has not been filed. Service Order No. 1249 enables the Octoraro Railway to provide rail service to shippers located adjacent to this line pending disposition by the Commission of its application for permanent authority.

DATES: Effective 11:59 p.m., May 15, 1977. Expires 11:59 p.m., November 10, 1977.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone 202–275–7840.

SUPPLEMENTARY INFORMATION: The order is reprinted in full below.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 10th day of May 1977.

Upon further consideration of Corrected Service Order No. 1249 (41 FR 34607 and 50448), and good cause appearing therefor:

It is ordered, That, corrected Service Order No. 1249 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

§ 1033.1249 **Octoraro Railway, Inc., authorized to operate over portion of USRA Line No. 142, former Octoraro Branch of Penn Central Transportation Co.**

* * * * *

(g) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 15, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date: This amendment shall become effective at 11:59 p.m., May 15, 1977.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission.[1]

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-14025 Filed 5-16-77;8:45 am]

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte 252 Sub-No. 2]

PART 1036—INCENTIVE PER DIEM CHARGES ON BOXCARS AND GONDOLA CARS

Incentive Per Diem

MAY 1977.

AGENCY: Interstate Commerce Commission.

ACTION: Correction.

SUMMARY: This document corrects a final rule that appeared at pages 23511 through 23513 in the FEDERAL REGISTER of Monday, May 9, 1977 (Vol. 40, No. 82).

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Mrs. Janice Rosenak, Deputy Director, Section of Rates, Interstate Commerce Commission, Washington, D.C. 20423, 202–275–7693.

The following correction is made:

On pages 23512 and 23513, § 1036.4 is corrected to read as follows:

§ 1036.4 **Use of funds on boxcars.**

The net credit balances resulting from incentive per diem settlements on boxcars, which are earmarked in accordance with § 1036.3, may be drawn down in whole or in part at any time by the carrier to build, lease equivalent of purchase, or purchase, in whole or in part, new unequipped boxcars for general service described in § 1036.1, *Provided,* The carrier has in the same calendar year built, leased, or purchased its 1964–68 average acquisitions of such boxcars and made up an [sic] arrearage in having failed to maintain such average each year this order is in effect. Earmarked funds may also be used in whole or in part to lease any number of new unequipped boxcars for general use described in § 1036.1 in which the carrier is not acquiring an equity interest, *Provided,* The carrier has in the same calendar year leased its 1964–68 average number of such boxcars and made up any arrearage in having failed to maintain such average each year the order is in effect. Nonequity leases must be at least 10 years in duration, and, in connection with such leases, earmarked funds must not be used for the cost of maintenance. Earmarked funds may be used in whole or in part to rebuild any number or portion of general service, unequipped boxcars described in § 1036.1, *Provided,* The carrier has in the same calendar year rebuilt its 1964–68 average number of such boxcars and made up any arrearage in having failed to maintain such average each year the order is in effect. Net balances on Canadian-owned cars may be drawn without regard to prior acquisitions, but where the designee is a class I United States carrier such drawdowns shall not affect that carrier's accumulation of arrearages. However, upon application, including a showing that all parties to the proceeding herein have been notified by the carrier of such application and a showing of good cause why any carrier is unable to draw down in whole or in part the net credit balance resulting from incentive per diem settlements because it cannot comply with the above test period average requirement of having in the same calendar year built, rebuilt, leased, or purchased its 1964-68 average number of such boxcars and made up any arrearage in having failed to maintain such average each year this order is in effect, the Commission may, in its discretion, after consideration of all views regarding the application, modify the test period average to the extent consistent with the public interest and the national transportation policy. Such modification, as a minimum, shall require that a carrier match the earmarked funds it will use with an equal amount of its own funds. Similarly, a carrier using earmarked funds, in whole or in part, to build, rebuild, lease, or purchase general service, unequipped boxcars of the XF designation, shall only be required, as a minimum, to match the earmarked funds it will use to purchase XF boxcars with an equal amount of its own funds. Earmarked funds must be put to use within 18 months after the end of the calendar year in which the funds are collected and result in a net credit balance for the building, rebuilding, leasing, or purchasing of general service, unequipped boxcars described in § 1036.1 for addition to such carrier's or designee's fleet in accordance with this part. Upon a showing of good cause an application, including a showing that the parties to the proceeding herein have been notified by the carrier of such application, may be made to the Commission for waiver of the said 18-month period, which may, in the Commission's discretion, be granted after consideration of all views regarding the application. If the earmarked funds are not used within the 18-month period, they may be voluntarily surrendered to Rail Box whose establishment and operation was approved in *American Rail Box Car Co.—Pooling,* 347 I.C.C. 862. If the carrier fails within the stated period to put to use collected earmarked funds which result in a net credit balance, has not obtained relief

[1] Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member Joel E. Burns not participating.

from that requirement, and has not surrendered such funds to Rail Box, the Commission will investigate the matter to determine what, if any, corrective action is warranted. Appropriate corrective action would include section 16(12) remedies among others. Carriers may make temporary investments of unexpended funds in Government bonds or other liquid securities. Such securities must be readily convertible to cash so that funds remain available for boxcar purchases. Interest earned must become part of the earmarked fund. As used in this section and § 1036.5, "build," "rebuild," "lease," or "purchase" refer to the commitment to build, rebuild, lease, or purchase which results in the acquisition of a car on line ready for use within 10 months from the date of commitment, except that in extraordinary cases beyond the control of the carrier or the car supplier, a car that is delivered after 10 months from the date of commitment may qualify if approved by the Bureau of Accounts of this Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-14076 Filed 5-16-77;8:45 am]

SUBCHAPTER 13—PRACTICE AND PROCEDURE

PART 1121—ABANDONMENT OF RAILROAD LINES

Modification of Regulations for the Abandonment of Railroad Lines and Discontinuance of Service

AGENCY: Interstate Commerce Commission.

ACTION: Reconsideration of Rulemaking.

SUMMARY: Upon consideration of all the evidence of record, including the petitions for reconsideration and arguments of the various parties, it was apparent that certain modifications to the adopted regulations were warranted, primarily to clarify the definition of a line "potentially subject to abandonment, the republication of category 3 lines pending before the Commission, the computation of revenues attributable and avoidable costs for the base year, and the procedue for the filing of the carrier's notice of intent to abandon a line of railroad.

EFFECTIVE DATE: May 3, 1977.

FOR FURTHER INFORMATION CONTACT:

Philip Israel, Deputy Director, Section of Finance, Interstate Commerce Commission, Washington, D.C. 20423 (202-275-7245).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to the enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, (4RA) Public Law 94-210, the Interstate Commerce Commission and its Rail Services Planning Office jointly instituted a rulemaking proceeding entitled Ex Parte 274 (Sub-No. 2) for the purpose of developing and promulgating new regulations governing the abandonment of railroad lines and the discontinuance of service.

In the report and order served on November 10, 1976, in Ex Parte 274 (Sub-No. 2), published at 41 FR, November 4, 1976, page 48520, the abandonment regulations in Part 1121 of Chapter X of Title 49 of the Code of Federal Regulations were replaced in full by new regulations designed to implement rigid time limits on the processing of abandonment applications imposed by 4RA, to expand the type of notice required by a railroad proposing to abandon a line or discontinue service, and to provide an opportunity for parties wishing to preserve a line, with respect to which the Commission has found that the public convenience and necessity permit abandonment or discontinuance, to offer financial assistance to the railroad.

Several petitions for reconsideration of the report, order, and regulations were filed by carriers, shippers and other interested parties.

The proposed modifications for clarification were considered and accepted by the Commission in its report and order served May 3, 1977. Accordingly, the adopted regulations in Ex Parte 274 (Sub-No. 2) are modified to read:

§ 1121.20 System diagram map.

* * * * * *

(b) * * *

(2) All lines or portions of lines potentially subject to abandonment are those which the carrier has under study and believes may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues.

* * * * * *

§ 1121.22 Filing and publication.

* * * * * *

(c) Republication of category 3 lines, which prior to November 1, 1976, were already set for oral hearing, modified procedure, or for which an order has been issued finding public convenience and necessity not to require future continued operation of the line, is not required for compliance with the section.

* * * * * *

§ 1121.30 Notice of intent to abandon line or discontinuance service.

(a)(1) The applicant shall give notice of its intent to file an abandonment or discontinuance application by (i) serving notice on the Commission by certified letter at least concurrently with service upon those shippers who are significant users (as defined in § 1121.11 (m)) of the line proposed to be abandoned or discontinued, or at the time the notice is first published, whichever first occurs, on the Governor (by certified mail), on the Public Service Commission (or equivalent agency), and on the designated State agency of each State in which all or part of the line of railroad sought to be abandoned or over which service is proposed to be discontinued is situated, or at the time the notice is first published whichever occurs first (ii) * * *

* * * * * *

§ 1121.32 Contents of application.

(d) * * *

(1) Computation of the revenues attributable, avoidable costs, and reasonable return on value for the line to be abandoned for the base year (as defined by § 1121.11(c) and to the extent such branch level data is available), in accordance with the methodology prescribed in § 1121.45, as Exhibit 1.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-14047 Filed 5-16-77;8:45 am]

Title 32A—National Defense, Appendix

CHAPTER VI—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 634—COPPER AND COPPER-BASE ALLOYS (DMS ORDER 4)

Revision of Schedule A—Set-Aside Percentages

AGENCY: Domestic and International Business Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Commerce Department revises the schedule establishing the amount of copper controlled materials that the copper industry must set-aside for use for programs authorized by the Director of the Federal Preparedness Agency of G.S.A. Although the need for copper controlled materials under these programs has not changed much since this schedule was last revised, the percentage set-asides for three copper products is reduced to reflect the greater production of these copper products in 1976 over 1975.

EFFECTIVE DATE: This revised schedule becomes effective July 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Gilbert J. Breer, Mobilization Operations & Plans Division, Office of Industrial Mobilization, Bureau of Domestic Commerce, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-3634.

SUPPLEMENTARY INFORMATION: The revision changes Schedule A of August 23, 1976, to DMS Order 4 by changing the base period from calendar year 1975 to calendar year 1976, and by changing the set-aside percentages from 7 to 4 percent on unalloyed rod, bar, shapes and wire; from 10 to 6 percent on alloyed seamless tube and pipe; from 3 to 2 percent on copper foundry products. The purpose of the proposed changes is to more adequately reflect the current structure of the copper controlled materials industry and current authorized program requirements for copper controlled materials.

This amendment of Schedule A to DMS Order 4 is found necessary and appro-

priate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended (50 U.S.C. App. 2154). In the formulation of this order, there was consultation with industry representatives, including trade association representatives, and consideration was given to their recommendations.

This amendment applies to authorized controlled material orders calling for delivery after June 30, 1977.

AUTHORITY: (Defense Production Act of 1950, as amended (64 Stat. 816; 50 U.S.C. App. 2061 et seq.); Executive Order 10480, as amended, 18 FR 4939, 6201, 19 FR 3807, 7249, 21 FR 1673, 23 FR 5061, 6971, 24 FR 3779, 27 FR 9683, 11447, 3 CFR 1949–1953 Com., p. 962; Executive Order 11725, 38 FR 17175; DMO 3, 32A CFR 15; Department of Commerce Organization Orders 10–3, 40 FR 59764, as amended, 41 FR 28334, and 40–1, 40 FR 8978; Department of Commerce, Domestic and International Business Administration Organization and Function Orders 41–1, as amended 39 FR 2780, 39 FR 18490; 45–1, 40 FR 10217, 45–2, 40 FR 10218.)

SCHEDULE A TO DMS ORDER 4

SET-ASIDE PERCENTAGES

(See Sec. 6(f) of DMS Order 4)

Based Period—January–December 1976

(See Sec. 2(o) of DMS Order 4)

Product	*Percentage of orders calling for delivery after June 30, 1977*
Brass mill products:	
Unalloyed:	
Plate, sheet, strip and rolls	2
Rod, bar, shapes, and wire	4
Seamless tube and pipe	2
Brass mill products—Continued	
Alloyed:	
Plate, sheet, strip and rolls	2
Rod, bar, shapes and wire	2
Seamless tube and pipe	6
Military ammunition cups and discs	(1)
Copper wire mill products:	
Copper wire and cable:	
Bare and tinned	2
Weatherproof	2
Magnet wire	2
Paper and lead power cable	2
Paper and lead telephone cable	2
Asbestos cable	2
Portable and flexible cord	2
Communications wire and cable	2
Shipboard cable	2
Automotive and aircraft wire cable	2
Insulated power cable	2
Signal and control cable	2
Coaxial cable	2
Copper-clad steel wire containing over 20 percent copper by weight regardless of end use	2
Copper foundry products	2
Unalloyed copper powder mill products	(1)
Copper-base alloy powder mill products	(1)

[1] No reserve space required. Producers of these products are nevertheless required to accept authorized controlled material orders for such products in accordance with the provisions of DMS Regulation No. 1 and this order. However, Section 6(f) of DMS Order 4 does not apply to such authorized controlled material orders.

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, BUREAU OF DOMESTIC COMMERCE,

JOHN P. KEARNEY,
Acting Deputy Assistant Secretary for Domestic Commerce.

[FR Doc.77–14233 Filed 5–16–77;10:20 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR Parts 1421, 1446]

1977 CROP OF PEANUTS

Loan and Purchase Program

AGENCY: Commodity Credit Corporation, Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: The purpose of this notice is to advise that the Secretary of Agriculture proposes to make determinations and issue regulations concerning a loan and purchase program for the 1977 crop of peanuts and to schedule a public meeting to receive oral comments. The Loan and Purchase Program is authorized by the Agricultural Act of 1949, as amended, and the Commodity Credit Corporation Charter Act, as amended. The program is intended to stabilize market prices and to protect producers, handlers, processors and consumers.

DATES: Comments must be received on or before June 24, 1977, to be sure of receiving consideration. The date of the public meeting will be June 9, 1977.

ADDRESS: Tobacco and Peanut Division, Agricultural Stabilization and Conservation Service, P.O. Box 2415, U.S. Department of Agriculture, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Dallas R. Smith (ASCS) (202) 447-7405.

SUPPLEMENTARY INFORMATION: The present regulations, to which these changes are proposed for the 1977 crop, were published in the FEDERAL REGISTER on July 15, 1974 (39 FR 25959) and are entitled "General Regulations Governing 1974 and Subsequent Crop Peanut Warehouse Storage Loans". The new regulations to be issued will be a 1977 crop supplement to the general regulations. These regulations will include (1) loan and purchase rates by type of peanuts, (2) premiums and discounts, and (3) other operating provisions necessary to carry out the program.

Section 101 of the Agricultural Act of 1949, as amended, directs the Secretary to make support available on peanuts to cooperators, if producers have not disapproved marketing quotas at a level between 75 and 90 percent of the parity price with the minimum permissible level of support within such range to be determined by the supply percentage. Marketing quotas were approved for the 1975 through 1977 crops by 97 percent of the growers voting in a December 1974 referendum.

Section 401 of that Act requires that in determining the level of support in excess of the minimum level provided by law, consideration be given to the supply of the commodity in relation to the demand therefor, the levels at which other commodities are being supported, the availability of funds, the perishability of the commodity, the importance of the commodity to agriculture and the national economy, the ability to dispose of stocks acquired through a support operation, the need for offsetting temporary losses of export markets, and the ability and willingness of producers to keep supplies in line with demand.

Section 403 of the Act provides that appropriate adjustments may be made in the support level for differences in grade, type, quality, location and other factors. The average of any such adjustments shall, so far as practicable, be equal to the level of support for peanuts for the applicable crop year determined in accordance with the Agricultural Act of 1949, as amended.

Current program provisions regarding peanut warehouse storage loans may be found in regulations in Title 7, Part 1446 of the Code of Federal Regulations. Current program provisions regarding peanut farm storage loans may be found in regulations governing loans, purchases and other operations for grain and similarly handled commodities which appear in Title 7, Part 1421 of the Code of Federal Regulations.

Prior to making any determination, the Department will give consideration to comments, data, views and recommendations submitted in writing within the comment period to the Director, Tobacco and Peanut Division. All written submissions made pursuant to this notice will be made available for inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 5746 South Building, 14th and Independence Avenue SW., Washington, D.C. (7 CFR 1.27(b)).

In addition to considering written comments, the Department will hold a public meeting in Washington, D.C., on June 9, 1977, at 9:00 a.m. in the Jefferson Auditorium, South Building, USDA. The meeting will be open to the public. The purpose of the meeting is to give members of the industry and other interested persons the opportunity to furnish oral comments and suggestions with respect to the proposed rule for the 1977 crop.

Signed at Washington, D.C. on May 12, 1977.

VICTOR A. SENECHAL,
Acting Executive Vice President,
Commodity Credit Corporation.

[FR Doc.77-14141 Filed 5-13-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 212]

ALASKA NORTH SLOPE CRUDE OIL PRICING AND ENTITLEMENTS TREATMENT

Change of Hearing Locations

AGENCY: Federal Energy Administration.

ACTION: Change of hearing locations.

SUMMARY: This notice changes the location for hearings in San Francisco and Anchorage in connection with the Federal Energy Administration's notice of proposed rulemaking respecting Alaska North Slope Crude Oil pricing and entitlements treatment issued April 30 (42 FR 22889, May 5, 1977).

The site of the hearing in San Francisco on May 26, 1977, remains the same except that Court Room No. 14 will be used instead of Court Room No. 15.

The location of the hearing in Anchorage on May 27, 1977, has been changed to: Z. J. Loussac Library, 427 F Street, Anchorage, Alaska.

Issued in Washington, D.C., May 11, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-14078 Filed 5-13-77;8:56 am]

[10 CFR Part 430]

ENERGY CONSERVATION PROGRAM FOR APPLIANCES

Test Procedures for Automatic and Semi-Automatic Clothes Washers and Determination That Test Procedures Cannot Be Developed for any Other Class of Clothes Washers

AGENCY: Federal Energy Administration.

ACTION: Proposed rule.

SUMMARY: The Federal Energy Administration (FEA) hereby proposes to amend its regulations in order to prescribe test procedures for automatic and semi-automatic clothes washers under the Energy Policy and Conservation Act. Automatic and semi-automatic clothes washers are classes included within the broader type of appliances, clothes wash-

ers, covered by the Act. The Act requires that standard methods for testing covered appliance types be prescribed as part of the energy conservation program for appliances. The Act further authorizes FEA to prescribe test procedures for classes within a given type of covered product and permits FEA to determine that test procedures cannot be developed for some class or classes within a given type. FEA has determined that test procedures cannot be developed which meet the requirements of section 323(b) for any class of clothes washers other than the automatic and semi-automatic classes. The intended effect of this proposal is to implement the Acts requirements by soliciting public comments before test procedures are prescribed and to give notice of and the reasons for FEA's determination that certain test procedures cannot be developed.

DATES: Comments by July 13, 1977, 4:30 p.m.; requests to speak by July 8, 1977, 4:30 p.m.; statements by July 15, 1977, 4:30 p.m.; hearing to be held on July 19, 1977, at 9:30 a.m.

ADDRESSES: Comments and requests to speak at the hearing to: Executive Communications, Room 3317, Federal Energy Administration, Box MN, Washington, D.C. 20461; statements to Regulations Management, Room 2214, Federal Energy Administration, 2000 M Street NW., Washington, D.C. 20461. Hearing held at: Federal Energy Administration, Room 2105, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

James A. Smith, Room 307, Old Post Office Building, 12th Street and Pennsylvania Avenue NW., Washington, D.C. 20461 202–566–4635.

SUPPLEMENTARY INFORMATION:

A. BACKGROUND

The Federal Energy Administration (FEA) proposes to amend Chapter II of Title 10, Code of Federal Regulations, in order to prescribe test procedures for automatic and semi-automatic clothes washers pursuant to section 323, 42 U.S.C. 6293, of the Energy Policy and Conservation Act (Act) (Pub. L. 94–163). The Act requires that FEA prescribe standard methods for testing types of covered appliances and further authorizes FEA to prescribe test procedures for classes within a given type of covered product. Automatic and semi-automatic clothes washers are classes included within the type designated by the Act as "clothes washers".

Development of test procedures is one discrete part of the energy conservation program for appliances. Even when promulgated, final test procedures will not of themselves require testing to be conducted. They will merely establish standard methods for testing when testing is otherwise required by the Act itself or by regulations implementing other parts of the program. For example, the Federal Trade Commission (FTC), in exercising its appliance energy efficiency labeling authority regarding a particular appliance type, may well require the application of substantially less than all of the final test procedures applicable to that appliance type.

By notice issued May 10, 1976 (41 FR 19977, May 14, 1976), FEA proposed to establish Part 430, entitled "Energy Conservation Program for Appliances," in Chapter II of Title 10 of the Code of Federal Regulations. That notice proposed a Subpart A to Part 430, containing general provisions, and a Subpart C, containing proposed energy efficiency improvement targets. Proposed Subparts A and C have not yet been finalized. A further proposal of Subpart C will be necessary in order to meet the requirements of section 325(a)(1) of the Act as amended by section 161 of the Energy Conservation and Production Act (Pub. L. 94–385).

Subpart A as previously proposed (41 FR 19977, May 14, 1976; 42 FR 15423, March 23, 1977) contained definitions in proposed section 430.2, some of which are applicable to the test procedures for automatic and semi-automatic clothes washers. FEA is today withdrawing the previously proposed definition in § 430.2 of "clothes washer" and substituting a new definition of "clothes washer" which includes a description of each of the three different classes of clothes washers. In addition, FEA is proposing to add to the definition in § 430.2 of "Basic model", a subparagraph (10) applying specifically to automatic and semi-automatic clothes washers.

By notice issued July 22, 1976 (41 FR 31237, July 27, 1976), FEA proposed an amendment to proposed Part 430 to add a Subpart B which would contain the appliance test procedures required to be prescribed by section 323 of the Act. The notice issued July 22 described the requirements of section 323 and set forth proposed test procedures for room air conditioners. A further notice issued March 24, 1977 (42 FR 16811, March 30, 1977) solicited comments with respect to a clarification of the provision concerning the number of units to be tested. By notice issued March 17, 1977 (42 FR 15423, March 22, 1977) FEA proposed an amendment setting forth proposed test procedures for dishwashers. Test procedures for water heaters, television receivers, refrigerators and refrigerator-freezers, freezers and clothes dryers were issued on April 21, 1977 (42 FR 21576 et seq., April 27, 1977).

Section 323(a)(2) of the Act requires FEA to direct the National Bureau of Standards (NBS) to develop, for specifically named types of covered products, test procedures for the determination of the estimated annual operating costs and at least one other useful measure of energy consumption which FEA determines is likely to assist consumers in making purchasing decisions. Pursuant to the Act, FEA directed NBS to develop test procedures for FEA's use in prescribing test procedures under the Act. As part of this undertaking, NBS evaluated existing test procedures for measuring energy consumption of clothes washers.

NBS has transmitted to FEA a test procedure review document which recommends test procedures for both automatic and semi-automatic clothes washers. NBS also recommended that test procedures cannot be developed for any class of clothes washers other than automatic and semi-automatic clothes washers, as discussed below. The recommended test procedures incorporate the general approach to calculating the energy consumption of automatic clothes washers contained in the Association of Home Appliance Manufacturers (AHAM) standard HLW–2EC. Copies of the NBS review document will be made available for inspection by interested persons as provided for later in this notice.

B. MEASURES OF ENERGY CONSUMPTION

The Act requires FEA to prescribe test procedures for the determination of estimated annual operating costs and at least one other useful measure of energy consumption which the Administrator determines is likely to assist consumers in making purchasing decisions. Since the annual operating cost of automatic and semi-automatic clothes washers differs significantly depending on whether the water used is electrically heated or heated by gas or oil, FEA is proposing to establish two alternate values for the estimated annual operating cost for automatic and semi-automatic clothes washers: one assuming that electrically heated water is used and the other assuming that either gas-heated or oil-heated water is used. In each case, the estimated annual operating cost is based upon the average number of normal cycles in which the machine is operated annually (representative average-use cycle), the cost of energy (representative average unit costs) and the energy consumption in both heating the water for and operating the machine during a normal cycle.

An additional proposed measure (§ 430.22(j)(2)) that is likely to assist consumers in making purchasing decisions is the energy factor, which is defined as the quotient of a load of clothes divided by the energy consumption per normal cycle. Among other possible applications, the energy factor may be used by FEA to determine the efficiency of automatic and semi-automatic clothes washers for the purposes of the energy efficiency improvement program described by section 325 of the Act.

FEA recognizes that there may be additional useful measures of energy consumption for automatic and semi-automatic clothes washers other than the measures described above. Accordingly, today's proposal, in proposed § 430.22(j)(3), provides for other useful measures which the Administrator determines are likely to assist consumers in making purchasing decisions. These measures, however, must be derived from the application of the uniform test method proposed today as Appendix J to Subpart B. Manufacturers would if required, only have to perform various computations while still applying the same test method contained in Appendix J. For example, if the Administrator determined that annual energy consump-

tion for automatic and semi-automatic clothes washers would aid consumers in making purchasing decisions, this annual energy consumption figure could be derived by applying the uniform test method to calculate the appropriate amount of energy consumption and then performing computations involving this energy consumption data and the appropriate representative average-use cycle or cycles.

C. LABORATORY METHODOLOGY

Proposed Appendix J to Subpart B provides for a controlled laboratory environment for measuring energy consumption for the various automatic and semi-automatic clothes washers which are available to the consumer.

Based on industry data supplied by AHAM regarding the production-weighted energy consumption for 1972 clothes washers, NBS determined that approximately 97 percent of the total energy required to operate a clothes washer is the energy needed to produce the hot water used by the machine.

NBS conducted tests to determine the effect of a clothes load on the hot water used by clothes washers. Laboratory tests on five representative standard (regular) automatic clothes washers (washers with a tub capacity of at least 16 gallons) indicated that the use of a seven-pound standard dry test load reduced the water consumption measured at the maximum fill level by approximately 6 percent. A test procedure utilizing a "standard" test load was judged to require a test procedure that would be unduly burdensome. NBS, therefore, recommended that the tests be made without a load. Tests conducted without a load will produce repeatable and uniform results for making model-to-model comparisons and for obtaining energy efficiency improvement target data that correspond with the 1972 base year data provided by AHAM.

For the proposed test procedures, NBS recommended that the six percent decrease in hot water consumption be converted to a 0.94 multiplying factor, *MF*, for the use in calculating the annual energy consumption of automatic and semiautomatic clothes washers in Appendix J. This factor is applicable, however, only for those machines where the amount of fill water is influenced by the clothes load. The 0.94 factor, accordingly, is proposed to be used only for clothes washers that are sensor filled, and not time filled.

Since none of the currently available clothes washers are known to have a water temperature control valve, NBS recommends that the test procedures be conducted using only cold water. Although cold water would introduce an inherent error in hot water consumption measurements, the error would not be significant. For example, the density of water decreases with a rise in the temperature in the typical temperature range of water used in clothes washers. Therefore, if a clothes washer is equipped with a pressure sensitive switch to regulate the water fill, the amount of water consumed on a nominal 20 gallon maximum fill would be approximately 20.0 gallons of water at 65°F, 20.30 gallons at 140°F, or 20.35 gallons at 155°F.

Appendix J (section 5) contains hot water usage data for various wash/rinse temperature selections. These data for automatic clothes washers resulted from an industry field usage study and have been published by AHAM as an appendix to HLW-2EC, "Test method for Measuring Energy Consumption on Household Clothes Washers," December, 1975. The data are used in the proposed test method to obtain the per-cycle temperature-weighted hot water consumption for maximum and minimum water fill levels.

Appendix J (section 6) contains hot water usage data for various wash/rinse cycle temperature settings for semi-automatic clothes washers. Semi-automatic clothes washers are those which require user intervention to change the temperature of the water in the machine. The user must manually adjust the hot and cold water faucet valves when operating a semi-automatic clothes washer in order to have a different temperature of water in the machine during the rinse cycle. Hot water usage data for semi-automatic clothes washers was determined by NBS. NBS has estimated that 50 percent of the time the user will not adjust the water faucet valves to the desired setting and, therefore, the water used during the rinse cycle will be the same temperature as that used for the wash cycle. This 50 percent user intervention factor assumes that the user does not intend to rinse in hot water.

The values present in section 6 of the Appendix were determined by NBS using the data in 5.1, Five temperature selection ($n=5$), and applying the 50 percent factor to account for user intervention. The hot/hot use factor shown in section 6 is derived by adding 50 percent of the hot/warm use factor in 5.1 to 50 percent of the hot/cold use factor in 5.1. The hot/warm use factor in 6 is derived by taking 50 percent of the hot/warm use factor in 5.1. The hot/cold use factor in 6 is derived by taking 50 percent of the hot/cold use factor in 5.1. The warm/warm use factor in 6 is derived by taking 50 percent of the warm/cold use factor in 5.1 and adding it to the warm/warm use factor in 5.1. The warm/cold use factor in 6 is derived by taking 50 percent of the warm/cold use factor in 5.1. The cold/cold use factor in 6 is derived by using the cold/cold use factor in 5.1.

Appendix J provides average, per load, energy consumption values for maximum and minimum water fill levels. Field usage data provided by Proctor and Gamble, referenced elsewhere, indicate that maximum fill is used 72 percent of the time and minimum fill 28 percent of the time. Using this information, a weighted average of the energy consumed at both the maximum and minimum fill levels can be calculated by multiplying the per cycle energy for a maximum fill, E_{max}, and the per-cycle energy for a minimum fill, E_{min}, by the appropriate usage fill factors and summing the products.

The same usage fill factors are proposed to be used both for standard or regular (having a tub capacity of at least 16 gallons) and for compact (having a tub capacity of less than 16 gallons) automatic and semi-automatic clothes washers.

Section 323(a)(6) provides that FEA is not required to develop test procedures for a given class within a type of covered product if the Administrator determines that test procedures cannot be developed which meet the requirements of section 323(b). The Administrator, however, must publish such determination in the FEDERAL REGISTER together with the reasons therefore. FEA has determined that test procedures cannot be developed which meet the requirements of section 323(b) for any class within the type of covered product designated as "clothes washers" other than for the classes of clothes washers defined in section 430.2 as automatic and semi-automatic. NBS recommended that test procedures for measures of energy consumption which would not be unduly burdensome to conduct cannot be reasonably designed for any class of clothes washers other than automatic and semiautomatic clothes washers.

A test procedure designed to produce test results which would meaningfully reflect the energy consumption of a clothes washer must be capable of measuring the total volume of water (or the water fill level) typically used by the machine and the amount of hot water that comprises this volume. These measurements are essential since approximately 97 percent of the energy consumed by the machine in a normal washing cycle is the energy required to produce the hot water. The amount of energy consumed is therefore directly related to the total volume of hot water.

An automatic clothes washer predetermines by means of a control system the total volume of water used per wash cycle and the hot water component of that volume. A semi-automatic clothes washer predetermines by means of a control system the total volume of water used, but not the hot water component of that volume. The hot water component, however, can be estimated in the laboratory from use factors for various wash/rinse temperature settings for various automatic clothes washers.

Since the total volume of water (or the water fill level) used by the machine is not predetermined for any class of clothes washers other than automatic and semi-automatic, the hot water component of that volume of water can not be measured in the laboratory or, it is felt, be estimated in a reasonable manner. In addition to these reasons, FEA is influenced by the consideration that automatic and semi-automatic clothes washers comprise approximately 95% of all clothes washers manufactured today.

D. REPRESENTATIVE AVERAGE-USE CYCLE

Section 323(b)(2) (42 U.S.C. 6293(b)(2)) of the Act provides that test procedures for determining estimated annual operating costs of any covered product shall be calculated from measurements

of energy use in a respresentative average-use cycle (as determined by the Administrator) and from representative average unit costs (as provided by the Administrator) needed to operate such product during such cycle. FEA has determined that the representative average-use cycle for regular or standard automatic or semi-automatic clothes washers is eight loads per week or 416 cycles per year. This determination is based upon NBS' recommendation to FEA which, in turn, is based upon a Procter and Gamble field study reporting 7.8 washer loads per week for automatic clothes washers. NBS' recommendation and the Procter and Gamble field study are available for inspection as provided for later in this notice. NBS has recommended four loads per week, or 208 cycles per year, as a typical consumer usage figure for compact washers, starting with the figures developed in the Procter and Gamble study and assuming that compact clothes washers would typically be used by individuals or small families.

FEA intends to develop representative average unit costs of energy needed to calculate the annual operating cost for the representative average-use cycle and to provide this information to manufacturers and FTC on or before the effective date of test procedures for automatic and semi-automatic clothes washers.

E. NUMBER OF UNITS TO BE TESTED

Proposed § 430.23(j) would provide for sampling of each basic model to be tested when testing of automatic and semi-automatic clothes washers is required by the Act or by program regulations of agencies responsible for administering the Act. This provision is intended both to provide an acceptable level of assurance that test results are applicable to any entire basic model for which testing is required and to minimize the testing burden on manufacturers. FEA believes that the sampling approach proposed today will enable consumers to make meaningful comparisons of information appearing on appliance labels, and also will meet the requirements of section 323(b) of the Act that test procedures not be unduly burdensome to conduct.

Under proposed § 430.23(j), a sample of sufficient size of each basic model would be tested to assure that, for each measure of energy consumption described in § 430.22(j), there is a 95 percent probability that the mean of the values of these measures of the sample is within 5 percent of the true mean of these measures of the basic model. The size of the sample of a particular basic model will depend upon the following factors:

(a) The level of confidence required (set at 95 percent in the proposed regulations);

(b) The maximum allowable difference between the sample mean and the mean of the basic model (expressed in the proposal as a percent of the true mean and set at 5 percent); and

(c) The relationship of the mean and standard deviation of the basic model.

The relationship of the mean and standard deviation of the basic model can be determined from data available to manufacturers. With this information and using standard statistical techniques, manufacturers can determine the number of units required to be tested. In any case, no fewer than three units of each basic model must be tested. Sample units would be selected randomly from the production stream.

Manufacturers and other interested persons are encouraged to comment on the sampling approach. Manufacturers are especially encouraged to submit any data which relates to the size of the samples which the provision would require to be tested. Comments alleging that the sampling provision is burdensome should include a full discussion of the facts upon which such allegation is based.

F. REQUEST FOR PARTICULAR COMMENTS

While FEA is soliciting comments on all aspects of the proposed test procedures for automatic and semi-automatic clothes washers FEA is particularly interested in receiving comments on any other useful measures of energy consumption or data on typical consumer usage of automatic and semi-automatic clothes washers in addition to those proposed today.

Comments are also specifically requested addressing automatic or semi-automatic compact clothes washer product characteristics, market sales, and field usage patterns, since compact clothes washers are a relatively new product.

Comments concerning the actual procedures proposed to be followed by the laboratory technician and the necessary laboratory facilities and manpower required to perform the proposed tests are also particularly desired. For example, today's proposal includes a procedure, based upon HLW-2EC, which involves discrete hot water measurements for the fill, rinse, and spray rinse portions of a normal cycle for the wash/rinse temperature setting under test. FEA is particularly interested in comments on the advisability of an alternative approach which would allow the complete uninterrupted operation of the normal cycle for the wash/rinse temperature setting under test and would obtain the total electrical energy and volume of hot water consumed directly from the instrumentation.

In addition, FEA is interested in receiving comments on any definitions described in previously proposed § 430.2, as these provisions might affect the testing of automatic and semi-automatic clothes washers. Such comments are timely until the close of the written record, as specified below.

In addition to the definition of "basic model" for automatic and semi-automatic clothes washers, FEA is withdrawing the previously proposed definition in § 430.2 of "clothes washer" and substituting a new definition of "clothes washer" and of each of the three different classes of clothes washers.

G. COMMENT PROCEDURE

1. WRITTEN COMMENT

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposed test procedures for automatic and semi-automatic clothes washers set forth in this notice to Executive Communications, Room 3317, Federal Energy Administration, Box MN, Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on documents submitted to FEA with the designation "Automatic and Semi-Automatic Clothes Washers—Proposed Test Procedures." Fifteen copies should be submitted. All comments received by July 13, 1977, before 4:30 p.m., e.d.t., and all other relevant information, will be considered by FEA before final action is taken on the proposed regulations.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. FEA reserves the right to determine the confidential status of the information or data and treat it according to its determination.

2. PUBLIC HEARINGS

a. *Request procedure.* The time and place of the public hearing are indicated at the beginning of this preamble. The hearing will be continued, if necessary, on July 20, 1977.

FEA invites any person who has an interest in the proposed rulemaking issued today, or who is a representative of a group or class of persons that has an interest in today's proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated at the beginning of this preamble and must be received before 4:30 p.m., e.d.t., on July 8, 1977. Such a request may be hand delivered to such address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. A request should be labeled both on the document and on the envelope "Automatic and Semi-Automatic Clothes Washers—Proposed Test Procedures."

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a telephone number where she or he may be contacted through July 19, 1977.

FEA will notify, before 4:30 p.m., July 11, 1977, each person selected to appear at a hearing. Each person selected to be heard must submit 50 copies of her or his statement to the address and by the date given in the beginning of this preamble. In the event any person wishing to testify cannot meet the 50 copy requirement, alternative arrangements can be made with the Office of Regulations Management in advance of the

hearing by so indicating in the letter requesting an oral presentation or by calling the Office of Regulations Management at (202) 254-3345.

b. *Conduct of Hearings.* FEA reserves the right to select the persons to be heard at this hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by FEA with respect to the subject matter of the hearing will be based on all information available to FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearing to Executive Communications, FEA, before 4:30 p.m., e.d.t., July 13, 1977. FEA will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer, will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, included the transcript, will be retained by FEA and made available for inspection at the FEA Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter. A copy of NBS's recommendations concerning test procedures for automatic and semi-automatic clothes washers along with the Proctor and Gamble field study will also be made available for inspection at the FEA Freedom of Information Office.

H. ENVIRONMENTAL AND INFLATIONARY REVIEW

As required by section 7(c)(2) of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator has no comments.

The National Environmental Policy Act of 1969 requires FEA to assess the environmental impacts of any proposal by the Agency for "major Federal actions significantly affecting the quality of the human environment." Since test procedures under the conservation program for appliances will be used only to standardize the measurement of energy usage and will not affect the quantity or distribution of energy usage, FEA has determined that the action of prescribing test procedures, by itself, will not result in any environmental impacts. On this basis, FEA has determined that, with respect to prescribing test procedures under the conservation program for appliances, no environmental impact statement is required.

NOTE.—The proposal has been reviewed in accordance with Executive Order 11821 as amended by Executive Order 11949, and OMB Circular No. A-107 and has been determined not to be a major proposal requiring evaluation of its economic impact as provided for therein.

(Energy Policy and Conservation Act, Pub. L. 94-163, as amended by Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended by Pub. L. 94-385; E.O. 11790, 39 F.R. 23185.)

In consideration of the foregoing, it is proposed to amend Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C. May 11, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

1. Section 430.2 is amended by adding a subparagraph (10) as part of the definition of "Basic model," by proposing the definition of "clothes washer," and by adding definitions of "automatic clothes washer," "semi-automatic clothes washer," and "other clothes washer" to read as follows:

§ 430.2 Definitions.

* * * * *

"Basic model" means all units of a given type of covered product manufactured by one manufacturer and—

* * * * *

(10) With respect to automatic and semi-automatic clothes washers, having essentially identical functional physical and other clothes washers.

* * * * *

"Clothes washer" means a consumer product designed to clean clothes, utilizing a water solution of soap and/or detergent and mechanical agitation or other movement, and must be one of the following classes: automatic clothes washers, semi-automatic clothes washers, an dother clothes washers.

"Automatic clothes washer" means a regular, standard or compact clothes washer which has a control system which is capable of scheduling a preselected combination of operations, such as regulation of water temperature, regulation of the water fill level, and performance of wash, rinse, drain and spin functions, without the need for user intervention subsequent to the initiation of machine operation.

"Semi-automatic clothes washer" means a regular, standard or compact clothes washer which is the same as an automatic clothes washer except that user intervention is required to regulate the water temperature by means of external water faucet valves.

"Other clothes washer" means a regular, standard or compact clothes washer that is not an automatic or semi-automatic clothes washer.

2. Section 430.22 is amended by adding a paragraph (j) to read as follows:

§ 430.22 Test procedures for measures of energy consumption.

* * * * *

(j) *Automatic and semi-automatic clothes washers.*

(1) The estimated annual operating cost for automatic and semi-automatic clothes washers shall be—

(i) When electrically heated water is used, the product of the following three factors: (A) The representative average-use cycle of 416 cycles per year for standard models or 208 cycles per year for compact models, (B) the total per-cycle energy consumption for the normal cycle in kilowatt-hours per cycle, determined according to 4.6 of Appendix J of this subpart, and (C) the representative average unit cost in dollars per kilowatt-hour as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year, and

(ii) When gas-heated or oil-heated water is used, the product of: the representative average-use cycle of 416 cycles per year for standard models or 208 cycles per year for compact models and the sum of both (A) the product of the per-cycle machine electrical energy consumption for the normal cycle in kilowatt-hours per cycle, determined according to 4.4 of Appendix J to this subpart, and the representative average unit cost in dollars per kilowatt-hour as provided by the Administrator and (B) the product of the per-cycle water energy consumption for gas-heated or oil-heated water for the normal cycle, in Btu per cycle, determined according to 4.5 of Appendix J to this subpart, and the representative average unit cost in dollars per Btu for oil or gas, as appropriate, as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year.

(2) The energy factor for automatic and semi-automatic clothes washers shall be the quotient of one load of clothes divided by the clothes washer energy consumption per cycle, expressed as the sum of the machine electrical energy consumption and the maximum normal water energy consumption as determined in §§ 4.4 and 4.7, respectively, of Appendix J to this subpart. The resulting quotient for the energy factor shall be rounded off to the nearest 0.01 load per kilowatt-hour.

(3) Other useful measures of energy consumption for automatic or semi-auto-

matic clothes washers shall be those measures of energy consumption which the Administrator determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix J of this subpart.

* * * * *

3. Section 430.23 is amended by adding a paragraph (j), to read as follows:

§ 430.23 Units to be tested.

(j) *Automatic and semi-automatic clothes washers.*

(1) When testing of automatic or semi-automatic clothes washers is required for a measure or measures of energy consumption described in § 430.22 (j), a sample of sufficient size of each basic model shall be tested to ensure that, for each such measure of energy consumption, there is a 95 percent probability that the mean of the sample is within five percent of the true mean of such measures of the basic model, except that no fewer than three units of each basic model shall be tested.

(2) The sample selected for paragraph (j) (1) of this section shall be a simple random sample draw nfrom the production stream of the basic model being tested.

(3) A basic model having dual voltage ratings shall be separately tested at each design voltage such that the requirements of paragraph (j) (1) of this section are satisfied at each rating.

* * * * *

4. Subpart B of Part 430 is amended to add an Appendix J, to read as follows:

APPENDIX J—UNIFORM TEST METHOD FOR MEASURING THE ENERGY CONSUMPTION OF AUTOMATIC AND SEMI-AUTOMATIC CLOTHES WASHERS

1. Definitions

1.1 "AHAM" means the Association of Home Appliance Manufacturers.

1.2 "Compact" refers to a clothes washer with a tub capacity of less than 16 gallons of water.

1.3 "HLW–1" refers to the test standard published by the AHAM and titled "American National Standard Z224.1–1971 Performance Evaluation Procedure for Household Clothes Washers," December, 1971, designated as HLW–1.

1.4 "HLW–2EC" means AHAM "Test Method for Measuring Energy Consumption on Household Clothes Washers," December, 1975, designated as HLW–2EC.

1.5 "Normal cycle" means the cycle recommended by the manufacturer for washing cotton and/or linen clothes.

1.6 "Regular" refers to a clothes washer with a tub capacity of at least 16 gallons of water.

1.7 "Regular cycle" means normal cycle.

1.8 "Sensor filled" refers to a type of water fill control which uses a pressure or weight sensor to terminate the water fill cycle.

1.9 "Standard" means regular.

1.10 "Time filled" refers to a type of water fill control which uses a combination of water flow control in conjunction with time to terminate the water fill cycle.

1.11 "Tub capacity" means the volume of the tub in gallons of water at maximum fill.

1.12 "Temperature use factor" means the percentage of the total number of washes a user would wash with a particular wash/rinse temperature setting.

2. TESTING CONDITIONS

2.1 *Installation.* Install the clothes washer in accordance with manufacturer's instructions.

2.2 *Electrical energy supply.* Maintain the electrical supply to the clothes washer within one percent of the nameplate voltage.

2.3 *Water temperature.* The temperature of the water entering the inlet connections need not be controlled.

2.4 *Water pressure.* Maintain the pressure of the water supply between 32.5 and 37.5 pounds per square inch.

2.5 *Load.* The clothes washer shall be tested without a clothes load for determination of energy consumption.

2.6 *Energy flow and water flow instrumentation.*

2.6.1 *Water meters.* Install a water meter in both the hot and cold water inlet lines to measure water consumption. Each meter shall have a resolution no larger than 0.1 gallon and a maximum error no greater than 1.5 percent for all water flow rates from one to five gallons.

2.6.2 *Watt-hour meter.* A watt-hour meter shall be used to measure the electrical power equipped to operate the clothes washer through a complete normal cycle. It shall have a resolution no larger than 1 watt-hour and a maximum error no greater than one percent.

2.7 *Preconditioning.* If the clothes washer has not previously been tested nor filled with water in the preceding 96 hours, precondition it by running through it a cold rinse and drain to insure that hose, pump and sump are filled with water.

2.8 *Washer setting.* Set the wash time for a 10 minute wash period. The wash time (period of agitation) shall not be less than 9.75 minutes. Where controls are provided for agitation and spin speed, set for normal cycle.

3. TEST MEASUREMENTS

3.1 *Tub capacity.* Measure the tub capacity to determine compact or standard size by filling the clothes washer with the water level control set at its maximum setting. Record the total water accumulation, in gallons, in the tub.

3.2 *Test cycle.* Establish the testing conditions set forth in 2 of this Appendix.

3.2.1 *Per-cycle electrical energy consumption.* Set the water level selector at maximum fill and start the clothes washer. Measure the electrical energy consumption of the clothes washer for a complete normal cycle.

3.2.2 *Hot water consumption for a normal cycle with the water level selector at maximum fill.*

3.2.2.1 Set the water level selector at maximum fill.

3.2.2.2 For automatic clothes washers set the wash/rinse temperature selector to the hottest setting available (hot/warm). For semi-automatic clothes washers open the hot water faucet valve completely and close the cold water faucet valve to achieve the hottest setting (hot/hot).

3.2.2.3 Measure the gallons of hot water used to fill the tub.

3.2.2.4 Measure the total gallons of hot water used for all rinses.

3.2.2.5 Measure the total gallons of hot water used for all sprays.

3.2.2.6 For automatic clothes washers repeat 3.2.2.3, 3.2.2.4, and 3.2.2.5 for each of the other wash/rinse temperature selections available that use hot water. For semi-automatic clothes washers repeat 3.2.2.3, 3.2.2.4, and 3.2.2.5 for Hot/Cold, Warm/Cold, Warm/Warm, and Warm/Cold temperature settings with the following water faucet valve adjustments:

	Faucet position	
	Hot valve	Cold valve
Hot	Completely open	Closed.
Warm	do	Completely open.
Cold	Closed	Do.

3.2.3 *Hot water consumption for a normal cycle with the water level selector at minimum fill.* Set the water level selector at minimum fill and repeat 3.2.2.2 through 3.2.2.6.

3.2.4 *Hot water consumption for clothes washers that incorporate a partial fill during rinse.* For clothes washers that incorporate a partial water fill during rinse and cannot use the procedure in 3.2.2 and 3.2.3, measure hot water consumption over a complete normal cycle at maximum and minimum water fill levels and all wash/rinse temperature selections available that use hot water.

3.3 *Data recording.* Record for each test cycle in 3.2.

3.3.1 Total the kilowatt-hours of electrical energy, M_E, consumed during the test to operate the clothes washer in 3.2.1.

3.3.2 Total the hot water measured at maximum fill levels for each wash/rinse temperature selection.

3.3.3 Total the hot water measured at minimum fill levels for each wash/rinse temperature selection.

4. CALCULATION OF DERIVED RESULTS FROM TEST MEASUREMENTS

4.1 *Per-cycle temperature-weighted hot water consumption for maximum and minimum water fill levels.* Calculate for the cycle under test the per-cycle temperature-weighted hot water consumption for the maximum water fill level, V_{max}, and for the minimum water fill level, V_{min}, expressed in gallons per cycle and defined as:

$$V_{max}=\sum_{i=1}^{n}[V_i \times TUF_i],$$

where

V_i=Reported hot water consumption in gallons per cycle at maximum fill for each wash/rinse temperature selection, as provided in 3.2.2.

TUF_i=Applicable temperature use factor corresponding to wash/rinse temperature selection as shown in 5 or 6.

n=Number of wash/rinse temperature selections available to the user for the clothes washer under test,

and

$$V_{min}=\sum_{j=1}^{n}[V_i \times TUF_i]$$

where

V_i=Reported hot water consumption in gallons per cycle at minimum fill for each wash/rinse temperature selection, as provided in 3.3.3.

TUF_i=Applicable temperature use factor corresponding to wash/rinse temperature selection as shown in 5 or 6.

n=Number of wash/rinse temperature selections available to the user for the clothes washer under test.

4.2 *Total per-cycle hot water energy consumption for maximum and minimum water fill levels.* Calculate the total per-cycle hot water energy consumption for the maximum water fill level, E_{max}, and for the minimum water level, E_{min}, expressed in kilowatt-hours per cycle and defined as:

$$E_{max}=[V_{max} \times T \times K \times MF]$$

where

MF=multiplying factor to account for the influence of the clothes load volume=0.94 for clothes washers that are sensor filled and 1.0 for clothes washers that are time filled.

T=Temperature rise=90° F.

K=Water specific heat in kilowatt-hours per gallon degree F=0.00244.

V_{max}=As defined in 4.1,

and

$$E_{min}=[V_{min}\times T\times K\times MF]$$

where

MF=Multiplying factor to account for the influence of the clothes load volume=0.94 for clothes washers that are sensor filled and 1.0 for clothes washers that are time filled.
T=Temperature rise=90° F.
K=Water specific heat in kilowatt-hours per gallon degree F=0.00244.
V_{min}=As defined in 4.1.

4.3 *Total weighted per-cycle hot water energy consumption expressed in kilowatt-hours.* Calculate the total weighted per-cycle hot water energy consumption, E_T, expressed in kilowatt-hours per cycle and defined as:

$$E_T=[E_{max}\times F_{max}]+[E_{min}\times F_{min}]$$

where

F_{max}=Usage fill factor=0.72
F_{min}=Usage fill factor=0.28
E_{max}=As defined in 4.2.
E_{min}=As defined in 4.2

4.4 *Per-cycle machine electrical energy consumption.* The value recorded in 3.3.1 is the per-cycle machine electrical energy consumption, M_E, expressed in kilowatt-hours per cycle.

4.5 *Per-cycle water energy consumption using gas-heated or oil-heated water.* Calculate for the normal cycle the per-cycle water energy consumption. E_{TG}, using gas-heated or oil-heated water, expressed in Btu per cycle and defined as:

$$E_{TG}=E_T\times\frac{1}{e}\times 3412 \text{ Btu/Kwh}$$

where

e=Nominal gas or oil water heater efficiency=0.75
E_T=As defined in 4.3.

4.6 *Total per-cycle energy consumption when electrically heated water is used.* Calculate for the normal cycle the total per-cycle energy consumption, E_{TE}, using electrically heated water, expressed in kilowatt-hours per cycle and defined as:

$$E_{TE}=E_T+M_E$$

where

M_E=As defined in 4.4
E_T=As defined in 4.3.

4.7 *Maximum normal cycle water energy consumption.* Calculate the maximum normal cycle water energy consumption, E_{MC}, expressed in kilowatt-hours per cycle, and defined as:

$$E_{MC}=V_{max}\times T\times K$$

where

V_{max}=As defined in 4.1
T=As defined in 4.2
K=As defined in 4.2.

5. APPLICABLE TEMPERATURE USE FACTORS FOR DETERMINING HOT WATER USAGE FOR VARIOUS WASH/RINSE TEMPERATURE SELECTIONS FOR AUTOMATIC CLOTHES WASHERS

5.1 *Five temperature selection* (n=5).

Wash/rinse temperature setting:	*Temperature use factor* (TUF)
Hot/warm	0.25
Hot/cold	.15
Warm/warm	.30
Warm/cold	.20
Cold/cold	.10

5.2 *Four temperature selection* (n=4).

Wash/rinse temperature setting—Alternate I:	*Temperature use factor* (TUF)
Hot/warm	0.25
Hot/cold	.15
Warm/cold	.50
Cold/cold	.10
Alternate II:	
Hot/warm	0.25
Hot/cold	.15
Warm/warm	.30
Warm/cold	.30
Alternate III:	
Hot/cold	0.15
Warm/warm	.30
Warm/cold	.45
Cold/cold	.10

5.3 *Three temperature selection* (n=3).

Wash/rinse temperature setting:	*Temperature use factor* (TUF)
Alternate I:	
Hot/warm	0.40
Warm/cold	.50
Cold/cold	.10
Alternate II:	
Hot/cold	0.40
Warm/cold	.50
Cold/cold	.10
Alternate III:	
Hot/cold	0.40
Warm/warm	.50
Cold/cold	.10

6. APPLICABLE TEMPERATURE USE FACTORS FOR DETERMINING HOT WATER USAGE FOR VARIOUS WASH/RINSE TEMPERATURE SETTINGS FOR SEMI-AUTOMATIC CLOTHES WASHERS

6.1 *Six temperature settings* (n=6).

Wash/rinse temperature setting:	*Temperature use factor* (TUF)
Hot/hot	0.20
Hot/warm	.13
Hot/cold	.07
Warm/warm	.40
Warm/cold	.10
Cold/cold	.10

[FR Doc.77-14009 Filed 5-16-77;8:45 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 762 3097]

CBS INC.

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: This consent order requires a New York publishing firm to cease mailing and billing for unauthorized magazines; sending collection letters to receivers of unordered magazines; misrepresenting the effects of nonpayment on credit ratings in such letters; and transferring unpaid accounts of recipients of unsolicited magazines to debt collection or consumer reporting agencies. Further, the order requires respondents to make proper restitution to individuals who paid for unordered magazines; and to send correction letters to consumers whose credit standings may have been adversely affected by respondent's actions. Additionally, respondent is required to maintain prescribed records; and to institute an adequate program of continued surveillance to ensure conformance with the terms of the order.

DATE: Comments must be received on or before July 14, 1977.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th & Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Paul R. Peterson, Director, Cleveland Regional Office, Federal Trade Commission, 1339 Federal Office Bldg., 1240 East 9th St., Cleveland, Ohio 44199. (216-522-4207).

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the FTC Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

UNITED STATES OF AMERICA,
BEFORE FEDERAL TRADE COMMISSION

[File No. 762 3097]

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the matter of CBS Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the CBS Consumer Publishing Division of CBS Inc., a corporation, and it now appearing that CBS Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from such acts and practices.

IT IS HEREBY AGREED by and between CBS Inc., by its duly authorized officer in his capacity as Vice President thereof and as President of CBS Publishing Group of which CBS Consumer Publishing is a division, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent CBS Inc. is a corporation organized, existing, and doing business under and by virtue of the Laws of the State of New York, with its office and principal place of business located at 51 West 52nd Street, in the City of New York, State of New York 10019, and one of its components is the CBS Publishing Group.

CBS Consumer Publishing Division, a division of the CBS Publishing Group, with its principal office and place of business located at 600 Third Avenue, New York, New York 10016, is engaged in the manufacture, distribution, and sale of consumer publications, including magazines.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of the complaint here attached.

3. Proposed respondent waives: (a) Any further procedural steps; (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, togther with the draft of complaint here attached, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments or views submitted to the Commission within such 60-day period disclose facts or consid-

erations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the said copy of the complaint here attached which the Commission intends to issue.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in exact form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and it understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

IT IS ORDERED that respondent CBS Inc., a corporation, its successors and assigns, and respondent's agents, representatives, and employees, directly or through the CBS Consumer Publishing Division, or any other corporation, subsidiary, division, or other device in connection with the advertising, publishing, distributing, offering for sale, or selling of magazines in commerce or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do continue to, and forthwith, cease and desist from:

A. Mailing, or causing to be mailed, magazines without the prior expressed request or consent of the recipient.

B. Mailing, or causing to be mailed, a bill to recipients of magazines mailed without the recipient's prior expressed request or consent.

C. Mailing, or causing to be mailed, collection letters to recipients of magazines mailed without the recipient's prior expressed request or consent.

D. Transferring, or causing to be transferred, the alleged delinquent accounts of recipients of magazines mailed without the recipient's prior expressed request or consent, to a debt collection or consumer reporting agency.

Provided, that respondent may act in accordance with the exceptions extended by the Postal Reorganization Act, Section 2, 39 U.S.C. Section 3009 (1970), as amended or modified.

II

IT IS FURTHER ORDERED that respondent CBS Inc., a corporation, its successors and assigns, and respondent's agents, representatives, and employees, directly or through the CBS Consumer Publishing Division, or any other corporation, subsidiary, division, or other device in connection with the collection of consumer debts in commerce or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do continue to, and forthwith, cease and desist from:

A. Using any forms, letters, or materials which represent directly or indirectly, by any means, that where payment due from a consumer in purported receipt of magazines is not received, the information of said delinquency is referred to a debt collection or consumer reporting agency, unless such agency is notified as represented.

B. Misrepresenting, by any means, the manner, extent, and consequences of the referral of debt delinquency information, compiled as a result of the purported receipt of magazines, to debt collection or consumer reporting departments or agencies.

C. Misrepresenting, by any means, that failure to pay the alleged debt or delinquency, as a result of the purported receipt of magazines, will result in the consumer's credit rating being adversely affected.

D. Misrepresenting, in any manner, the names, roles, functions, relationship to respondent, or titles of individuals who are engaged in the collection of money purportedly due and payable as a result of the purported receipt of magazines, or who transfer information regarding particular consumers to debt collection or consumer reporting departments or agencies as a result of money purportedly due and payable as a result of the purported receipt of magazines.

III

IT IS FURTHER ORDERED, That: A. Respondent deliver a copy of this order to each of its present and future operating Groups, magazine publishers, and employees directly responsible for magazine circulation marketing activities, and to each of its present and future independent contractors engaged in magazine subscription fulfillment activities or magazine subscription advertising activities.

B. Respondent, through its CBS Consumer Publishing Division, institute a program of continuing surveillance adequate to reveal whether the business practices of individuals or entities described in Section III, paragraph A, conform to the requirements of this order.

C. Respondent, through its CBS Consumer Publishing Division, maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this order, for a period of two years after their receipt, and that such files be made available for inspection and copying by the Federal Trade Commission or its staff upon request.

IV

It is further ordered, That:

A. Respondent CBS Inc., through its CBS Consumer Publishing Division, shall offer a choice, at the option of the consumer, of full restitution ($2.98) or a free one (1) year subscription to Field & Stream magazine to any consumer who paid in full for an unordered subscription to Field & Stream magazine in connection with the Field & Stream Sweepstakes/Subscription promotion conducted in late 1974 and early 1975, after the receipt by such consumer of the letter signed by Ken Edwards or Vince Dema, which letter stated in part:

"DEAR FRIEND: When you sent us your Field & Stream subscription order I accepted it in good faith, and billed you as you requested.

Since that time I've sent you three action-packed issues of Field & Stream, but have not received your payment. You are long overdue. * * *"

This offer of full restitution or a free one (1) year subscription shall be made in the following manner:

(1) Within thirty (30) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, shall identify all consumers described in Section IV, paragraph A.

(2) Within sixty (60) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, shall notify in writing by first-class, post-paid mail, all consumers identified in Section IV, paragraph A(1), at their last known addresses, of their right to restitution in the language, manner, and form shown in Appendix A.

(3) The letter set forth in Appendix A shall request a response to respondent's offer by a certain date. Such date shall be at least one hundred twenty (120) days after the date this order becomes final. Any response to such offer postmarked after such date shall be null and void.

(4) Within one hundred fifty (150) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, will, in accordance with consumers' replies to Appendix A, either refund, by first-class, post-paid mail, all monies paid by consumers identified in Section IV, paragraph A(1), or initiate, in accordance with the terms of said letter, a free one (1) year subscription to Field & Stream magazine on behalf of said consumer.

(5) Within two hundred ten (210) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, will provide to the Commission the following information:

(a) A list of the consumers identified pursuant to Section IV, paragraph A(1), of this agreement.

(b) A list of the consumers to whom letters were sent pursuant to Section IV, paragraph A(2), and which were returned by the United States Postal Service to respondent's CBS Consumer Publishing Division, having been undelivered to consumers.

(c) A list of the consumers who do not return Appendix A or otherwise respond to Appendix A within the time period allowed for such response.

(d) A list of the consumers who elect to receive full two dollars and ninety-eight cents ($2.98) restitution under the terms of the offer extended by Appendix A.

(e) A list of the consumers who elect to receive a free one (1) year subscription to Field & Stream magazine under the terms of the offer extended by Appendix A.

B. Respondent, through its CBS Consumer Publishing Division, shall retain in its files for a period of thre years (3) years after the date that this order becomes final:

(1) All letters and their respective envelopes sent pursuant to Section IV, paragraph A(2), which are returned to respondent's CBS Consumer Publishing Division by the United States Postal Service as undeliverable.

(2) All letters (including those specified by Appendix A) sent to respondent's CBS Consumer Publishing Division by consumers in response to the offer extended by respondent's CBS Consumer Publishing Division pursuant to Section IV, paragraph A.

V

It is further ordered, That, within thirty (30) days after the date this order becomes

final, respondent, through its CBS Consumer Publishing Division, shall notify in writing, by first-class mail, in the language, manner, and form shown in Appendix B, those consumers whose names were forwarded by it in respect of Field & Stream magazine to Credit Index, a division of Hooper-Holmes.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth the manner and form in which it has complied with this order.

APPENDIX A

Date

NAME,
Address,
City, State, ZIP code.

Re: 1975 World of Leisure Sweepstakes—Field & Stream Magazine.

DEAR _____: Last year, we entered a subscription in your name to *Field & Stream* magazine. If you are dissatisfied with the entry of this subscription and your payment therefore, we would like to make you the following offer:

☐ A cast refund of $2.98 paid; or
☐ A free one-year subscription to *Field & Stream* magazine (newsstand value of $12.00) to begin at once or added at the end of your current subscription.

Please indicate, by checking one box only, which of the above alternatives you desire.

In order to take advantage of this offer, this letter must be postmarkked by _____
(Date)

We have enclosed a business reply envelope for your convenience.

Looking forward to hearing from you.

Very truly yours,
CBS Consumer Publishing.
By: _____

APPENDIX B

Date

NAME,
Address,
City, State, ZIP code.

Re: 1975 World of Leisure Sweepstakes—Field & Stream Magazine.

DEAR _____: Due to confusion with respect to an incompletely filled-out sweepstakes entry form/subscription order form, and the resultant billing to you with respect to copies of *Field & Stream* magazine, we referred your name to a direct-mail bad pay file with a consumer credit reporting agency.

Please be advised that we have caused your name to be removed from said file permanently.

By law (Fair Credit Reporting Act), all debt collection agencies or consumer credit reporting agencies must delete information with regard to this misunderstanding upon presentation of this letter.

You may wish to keep this letter and show it to any company who questions your *Field & Stream* bill with regard to the above.

Please excuse this misunderstanding, and accept our apology.

Very truly yours,
CBS Consumer Publishing.
By: _____

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

CBS INC.

FILE NO. 762 3097

The Federal Trade Commission has accepted an agreement to a proposed consent order from CBS Inc.

The proposed consent order was placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that CBS Inc. violated Section 5 of the Federal Trade Commission Act by engaging in the following acts:

(1) Mailing unordered magazines to consumers;

(2) Billing consumers for the unordered magazines;

(3) Mailing collection letters to certain consumers;

(4) Transferring to a credit reporting agency the alleged delinquent accounts of consumers receiving and not paying for the unordered magazines.

The proposed consent order requires that CBS cease and desist from:

(1) Mailing magazines without the request or consent of the recipient;

(2) Billing for unordered magazines;

(3) Mailing collection letters to recipients of unordered magazines;

(4) Transferring to debt collection or consumer reporting agencies the accounts of recipients of unordered magazines.

In addition, the proposed consent order requires CBS to make refunds to certain individuals who paid for the unordered magazines, and to send a correction letter to those consumers whose credit may have been affected by the actions of CBS.

CBS must also cease and desist from misrepresenting in collection letters the effects of a consumer not paying his debts.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-14077 Filed 5-16-77;8:45 am]

FEDERAL POWER COMMISSION

[18 CFR Part 141]

[Docket No. RM77-19]

LABOR DEPARTMENT, RESIDENTIAL ELECTRIC BILL DATA

Proposed Reporting Requirements

AGENCY: Federal Power Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to extend for fifteen months the required period of parallel reporting using Form No. 3-P or other electric bill data used to compute the Consumer Price Index (CPI). The Commission ordered the reporting of this information in old and new formats to insure continuity while the Bureau of Labor Statistics (BLS) is revising the CPI. Delays in the revision process require extending the parallel reporting period.

DATES: Comments must be received on or before June 1, 1977.

ADDRESS: Office of the Secretary, Federal Power Commission, 825 N. Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

William Graban, Bureau of Power (202-275-4731).

Pursuant to Section 553 of the Administrative Procedure Act, 5 U.S.C. 553 and Sections 301, 304, 309, and 311 of the Federal Power Act (49 Stat. 854-856, 858-859; 16 U.S.C. 825(a), 825(b), 825(c), 825(b), 825(c), 825h, 825j), the Commission gives notice that it proposes to amend the reporting requirements of FPC Form No. 3-P as specified in Order No. 554 issued September 15, 1976, 41 FR 41687, for the collection of monthly sample electric bill data for use in compiling the Bureau of Labor Statistics Consumer Price Index. The amendment does not involve altering 18 CFR 141.28 which specifies the information to be completed on Form No. 3-P.

Order 554 specified a temporary period of parallel reporting to serve the needs of both the old and new Consumer Price Index calculations, with the new Index planned to be operational in April 1977. However, the Bureau of Labor Statistics (BLS) has encountered problems with the computer activities associated with the new Index now projects the new Index will not be operational until the Fall of 1977. Consequently, the BLS has requested that the FPC extend the period of parallel reporting until six months overlap of the old and new indexes has been accomplished. To meet the BLS needs it is proposed that Order No. 554 be revised to change the date of termination of parallel reporting from September 1977 to December 1978, with provisions for earlier termination upon notification by BLS that its needs have been satisfied.

Section 311 of the Federal Power Act (49 Stat. 859; 16 U.S.C. 825j) provides that the Commission is to secure and keep current information relating to the rates, charges and contracts in respect of the sale of electric energy and its service to residential, rural, commercial and industrial consumers and other purchases by private and public agencies. In accordance with Section 311 and pursuant to an agreement between the Federal Power Commission and the Bureau of Labor Statistics (Division of Statistical Standards of the Bureau of the Budget) dated November 5, 1940, the Commission has been supplying monthly electric bill data for a selected number of communities to the Bureau of Labor Statistics in order to eliminate duplicate requests among government agencies for information on electric rates.

The data now collected are used in the compilation of the Consumer Price Index and the Wholesale Price Index, the Federal government's official indicators of price movements and are widely used

for measuring changes in the Nation's economy. The data, collected on FPC Form No. 3–P, consist of (1) residential electric bill data for the Consumer Price Indexes, and (2) commercial and industrial electric bill data for the Wholesale Price Index. The Bureau of Labor Statistics determine the data to be collected.

A total of 404 residential electric bills comprise the current monthly sample for the Consumer Price Index. Between three and five residential bills are reported for each community canvassed. Each residential electric bill consists of a net base bill, a total bill and where applicable a fuel adjustment, sales and/or gross receipts tax, and other tax or charge. If applicable, respondents are also requested to provide the monthly fuel cost and the fuel adjustment per kilowatthour and the rate of sales or other tax.

The Bureau of Labor Statistics (BLS) is presently revising the Consumer Price Index (CPI). The revisions include some changes in the information to be collected as well as some changes in the individual utilities required to submit reports. To insure continuity, in April 1976 BLS requested the Commission to institute a parallel reporting system. Utilities previously submitting CPI data on the existing schedule of Form No. 3–P were to continue submitting that information through September 1977. At the same time, utilities chosen to submit data for the revised CPI were to commence reporting on the revised schedule of Form No. 3–P immediately. Because some of the utilities already submitting CPI data on the existing schedule were also to submit data to the revised CPI, a certain amount of parallel reporting was expected to occur. The Commission ordered such parallel reporting in Order No. 554 issued September 15, 1976, 41 FR 41687.

At the time the Commission issued Order No. 554, it was expected that the revised monthly CPI would be released to the public for the first time in April 1977; it was also expected that the existing CPI would be discontinued in September 1977. However, by letter dated March 11, 1977, from W. John Layng, BLS Assistant Commissioner for Prices and Living Conditions, to Jack L. Weiss, Acting Chief, Bureau of Power, the Commission was informed that BLS will not implement the revised CPI in April 1977. The revised CPI is now expected to be published for the first time in the "fall of 1977." Since BLS still plans to continue publishing the existing CPI for at least six months past the time the revised CPI is implemented, BLS now asks the Commission to order an additional fifteen months of parallel reporting, i.e., that parallel reporting be extended from September 1977 through December 1978.

The utilities subject to the extended reporting requirements are listed in the several appendices. The fifty-three utilities listed in Appendix A are currently reporting residential data on the existing schedule, and under the proposed revision of Order No. 554 would continue to do so through December 1978, when such reporting shall be terminated. Their reporting of residential data on the revised schedule, as provided in Order No. 554, would be unchanged. The ten utilities listed in Appendix B are currently reporting residential data on the existing schedule and would continue to do so through December 1978, when such reporting shall be terminated. These utilities are currently reporting commercial and industrial data and shall continue to do so. The twenty-one utilities listed in Appendix C are currently reporting residential data on the existing schedule only, and would continue to do so through December 1978. At that time, all such reporting would be terminated. Appendix D shows an existing schedule for reporting residential data. Appendix E shows a revised schedule for reporting residential data.

Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, not later than June 1, 1977, data, views, comments, or suggestions in writing concerning all or part of the revisions proposed herein. Written submittals will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, 825 North Capitol Street NE., Room 1000, Washington, D.C. 20426, during regular business hours. The Commission will consider all such written submittals before acting on the matters herein proposed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Submittals to the Commission should indicate the name, title, mailing address and telephone number of the person to whom communications concerning the proposal should be addressed, and whether the person filing them requests a conference with the staff of the Federal Power Commission to discuss the proposed revisions. The Staff, in its discretion, may grant or deny requests for conference.

The proposed amendments to the reporting requirements of FPC Form No. 3–P would be issued under the authority granted to the Federal Power Commission by the Federal Power Act, as amended, particularly Sections 301, 304, 309, and 311 (49 Stat. 854–856, 858–859; 16 U.S.C. 825(a), 825(b), 825(c), 825c (b), 825c(c), 825h, 825j).

Accordingly, the Commission proposes to amend Order No. 554 by changing the reporting requirements of FPC Form No. 3–P, as follows:

The fifty-three utilities listed in Appendix A are currently reporting residential data on the existing schedule, and shall continue to do so through December 1978, when such reporting shall be terminated, or until such earlier date as the Commission may establish based upon notification from the BLS that six months overlap of the old and new indexes, has been accomplished. In addition, they report residential data on the revised schedule as provided for in Order No. 554. The ten utilities listed in Appendix B are currently reporting residential data on the existing schedule and shall continue to do so through December 1978, when such reporting shall be terminated, or until such earlier date as the Commission may establish. These utilities are currently reporting commercial and industrial data and shall continue to do so. The twenty-one utilities listed in Appendix C are currently reporting residential data on the existing schedule only, and shall continue to do so through December 1978. At that time, all such reporting shall be terminated, or until such earlier date as the Commission may establish.

The Secretary shall cause prompt publication of this notice to be made in the FEDERAL REGISTER.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

APPENDIX A

The fifty-three utilities listed in Appendix A are currently reporting residential data on the existing schedule, and would continue to do so through December 1978, when such reporting shall be terminated. In addition, they report residential data on the revised schedule as provided for in Order No. 554.

Anchorage Municipal Light & Power Department, Alaska.
Chugach Electric Association, Inc., Alaska.
Pacific Gas & Electric Company, California.
San Diego Gas & Electric Company, California.
Southern California Edison Company.
Los Angeles Department of Water & Power, California.
Public Service Company of Colorado.
Connecticut Light & Power Company.
Potomac Electric Power Company, District of Columbia.
Georgia Power Company.
Hawaiian Electric Company, Inc
Commonwealth Edison Company, Illinois.
Illinois Power Company.
Indianapolis Power & Light Company, Indiana.
Central Maine Power Company.
Baltimore Gas & Electric Company, Maryland.
Boston Edison Company, Massachusetts.
Brockton Edison Company, Massachusetts.
Cambridge Electric Light Company, Massachusetts.
Massachusetts Electric Company.
Consumers Power Company, Michigan.
Detroit Edison Company, Michigan.
Northern States Power Company (Minn.).
Kansas City Power & Light Company, Missouri.
Union Electric Company, Missouri.
Independence Power & Light Department, Missouri.
Public Service Electric & Gas Company, New Jersey.
Consolidated Edison Company of N Y., Inc.
Long Island Lighting Company, New York.
New York State Electric & Gas Corporation.
Niagara Mohawk Power Corporation, New York.
Duke Power Company, North Carolina.
Cincinnati Gas & Electric Company, Ohio.
Cleveland Electric Illuminating Company, Ohio.
Ohio Power Company.
Pacific Power & Light Company, Oregon.
Portland General Electric Company, Oregon.
Duquesne Light Company, Pennsylvania.
Pennsylvania Power & Light Company.

Philadelphia Electric Company, Pennsylvania.
West Penn Power Company.
Nashville Electric Service, Tennessee.
Central Power & Light Company, Texas.
Dallas Power & Light Company, Texas.
Gulf States Utilities Company, Texas.
Houston Lighting & Power Company, Texas
Texas Power & Light Company.
Utah Power & Light Company.
Virginia Electric Power Company.
Puget Sound Power & Light Company, Washington.
Public Utility District No. 1 of Snohomish County, Washington.
Seattle Department of Lighting, Washington.
Wisconsin Electric Power Company.

APPENDIX B

The ten utilities listed in Appendix B are currently reporting residential data on the existing schedule and would continue to do so through December 1978 when such reporting shall be terminated. These utilities are currently reporting commercial and industrial data and would continue to do so.
Hartford Electric Light Company, Connecticut.
Orlando Utilities Commission, Florida.
Kansas Gas & Electric Company.
Kansas City Board of Public Utilities, Kansas.
Braintree Electric Light Department, Massachusetts.
Peabody Municipal Light Plant, Massachusetts.
Reading Municipal Light Department, Massachusetts.
Mississippi Power & Light Company.
Cleveland Division of Light & Power, Ohio.
Austin Electric Department, Texas.

APPENDIX C

The twenty-one utilities listed in Appendix C are currently reporting residential data on the existing schedule only, and would continue to do so through December 1978. At that time, all such reporting would be terminated.
Florence Electricity Department, Alabama.
Alaska Electric Light & Power Company.
Fairbanks Municipal Utilities System, Alaska.
Ketchikan Public Utilities, Alaska.
College Park Municipal Electric Light Department, Georgia.
East Point Municipal Electric Department, Georgia.
Northern Indiana Public Service Company.
Logansport Municipal Utilities, Indiana.
Iowa Electric Light Power Company.
Union Light, Heat & Power Company, Kentucky.
Wellesley Municipal Light Plant, Massachusetts.
Niles Board of Public Works, Michigan.
Otter Tail Power Company, Minnesota.
Nevada Power Company.
Atlantic City Electric Company, New Jersey.
Central Hudson Gas & Electric Corp., New York.
The Dayton Power & Light Company, Ohio.
Magnum Light & Power Department, Oklahoma.
Union Utility Department, South Carolina.
Martinsville Municipal Electric Department, Virginia.
Wisconsin Public Service Corporation.

[FR Doc.77-14000 Filed 5-16-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 145, 150, 172, 180, 189, 310, 430, 510, 589, and 700]

[Docket No. 77N-0085]

SACCHARIN AND ITS SALTS

Proposed Rule Making

Correction

In FR Doc. 77-11139, appearing at page 19996 in the issue of Friday, April 15, 1977, make the following changes:

1. On page 20005, the second number in the next to last line of the third full paragraph, first column, should read "189".

2. Also on page 20005, the next to last line of the second to last full paragraph should read "through 189" of Chapter I of Title 21 of the".

3. On page 20007, third column, the section number in the first full line under the heading for Part 172 should read "§ 172.135" and the second line of § 189.185(a) should read, "chemical, 1,2-benzisothiazoline-3-one-1,".

4. On page 20008, the seventh line of § 310.514 should read, "agement or mitigation of diabetes and".

5. Also on page 20008, third column, the words "used in manufacturing the drug product, or that the assay and other control procedures" should precede the word "are" in the last line of § 430.300 (b) (2) (ii).

[21 CFR Part 640]

[Docket No. 77N-0114]

ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS SOURCE PLASMA (HUMAN)

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations regarding Source Plasma (Human) to clarify the conditions under which a donor who has not had the red blood cells returned from a unit of blood collected during a plasmapheresis procedure or who has been a donor of a unit of whole blood may be plasmapheresed again within 8 weeks. Exceptions to the 8-week waiting period have become routine; this amendment would permit such waiver only when the donor possesses antibody that is (1) transitory, (2) of a highly unusual or infrequent specificity, or (3) of an unusually high titer.

DATE: Written comments by July 18, 1977.

ADDRESS: Comments may be addresed to the Hearing Clerk (HFC-20), Flood and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Michael L. Hooton, Bureau of Biologics (HFB-620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, Md. 20014, (301-443-1920).

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of March 12, 1976 (41 FR 10762) the Commissioner of Food and Drugs amended the Source Plasma (Human) regulations in §§ 640.60 through 640.70 (21 CFR 640.60 through 640.70) by redefining Source Plasma (Human) and clarifying and strengthening the standards in light of the inspectional and other regulatory experience of the Food and Drug Administration. Section 640.63(e) was amended to prevent subsequent plasmapheresis for 8 weeks of a donor who has not had the red blood cells returned during a plasmapheresis procedure or who has been a donor of a unit of whole blood, unless the donor has been examined and certified by a qualified licensed physician to be acceptable for further plasmapheresis.

The Commissioner expected that the 8-week waiting period would be waived by the physician only when the donor possessed an antibody that is (1) transitory, (2) of a highly unusual or infrequent specificity, or (3) of an unusually high titer. It was not intended that exceptions to the 8-week waiting period would become routine for any donor. Indeed, in the preamble of the March 12, 1976 final order, the Commissioner rejected two comments which suggested that plasmapheresis of a donor should be permitted after loss of red blood cells so long as the donor's hemoglobin or hematocrit value met prescribed levels, regardless of the elapsed time (41 FR 10763, item No. 7).

As the result of a review of license applications for Source Plasma (Human) and inspection reports of establishments collecting plasma, the Commissioner finds that § 640.63(e) has been misapplied to permit routine rather than occasional exceptions to the 8-week waiting period after loss of red blood cells.

For clarification, the Commissioner is proposing to amend § 640.63(e) to specify that exceptions to the 8-week waiting period be made only if the donor possesses an antibody that is (1) transitory, (2) of a highly unusual or infrequent specificity, or (3) of an unusually high titer, and further, consistent with § 606.160 (21 CFR 606.160), that records clearly document the antibody and the need for plasmapheresing the donor.

This proposal is consistent with the interpretation applied by the Bureau of Biologics, FDA, in its regulatory actions since March 12, 1976. Establishments found to misapply § 640.63(e) in their license applications or during inspections have been advised that routine exceptions to the 8-week waiting period is a violation of the regulations which may result in regulatory action. Although this publication is a proposal, FDA will

continue regulatory action based upon its existing application of § 640.63(e).

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes to amend Part 640 by revising § 640.63(e) to read as follows:

§ 640.63 Suitability of donor.

* * * * *

(e) *Failure to return red blood cells.* Any donor who has not had the red blood cells returned from a unit of blood collected during a plasmapheresis procedure or who has been a donor of a unit of whole blood shall not be subjected to plasmapheresis for a period of 8 weeks, unless:

(1) The donor has been examined by a qualified licensed physician and certified by the physician to be acceptable for further plasmapheresis before expiration of the 8-week period; and

(2) The donor possesses an antibody that is (i) transitory, (ii) of a highly unusual or infrequent specificity, or (iii) of an unusually high titer; and

(3) The antibody and the need for plasmapheresing the donor is documented.

Interested persons may, on or before July 18, 1977, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments (in quadruplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this documents does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: May 11, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-13997 Filed 5-12-77;2:13 pm]

Public Health Service

[42 CFR Part 86]

EDUCATIONAL RESOURCE CENTERS

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

Grants for Occupational Safety and Health

AGENCY: Public Health Service, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would amend 42 CFR Part 86 to provide for the award of grants by the National Institute for Occupational Safety and Health (NIOSH) for the establishment of occupational safety and health educational resource centers. An educational resource center grant is an award of funds to an eligible institution or agency to pay part of or all of the costs of the combination of long-term and short-term training activities in occupational safety and health. The objective of the educational resource center grants program is to provide a mechanism for combining and expanding existing activities and arranging for coordinated multidiscipline and multilevel training and continuing education in occupational safety and health under a single grant serving a geographic area. Applications for educational resource center grants will be accepted upon publication of this notice and will be awarded subject to the final regulations.

DATES: Comments concerning these proposed amendments must be received on or before June 16, 1977. Because of the need to act expeditiously to award funds available in FY 1977, and in view of the nature of the grant review process, the comment period has been limited to 30 days. For projects to be funded in FY 1977, initial grant review is expected to begin in May 1977 and be completed by July 1977. Review and funding decisions are expected to be made by August 1977, with project periods beginning on or about September 1, 1977.

ADDRESSES: Written comments concerning the proposed amendments may be sent to Ms. Mary L. Hough, Regulations Office, NIOSH, Center for Disease Control, Room 3-32, Park Building, 5600 Fishers Lane, Rockville, MD 20857. (301-443-6268). Training grant applications (Form PHS 2499-1 (7-75)) may be obtained from the Division of Training and Manpower Development, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226. Completed applications should be submitted to Division of Research Grants, National Institutes of Health, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20014.

FOR FURTHER INFORMATION CONTACT:

Dr. Alan Stevens or Mr. David Thelen, Division of Training and Manpower Development, NIOSH, 513-684-8221.

SUPPLEMENTARY INFORMATION: Section 21(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)(1)) authorizes the Secretary of Health, Education, and Welfare to make grants for the conduct of educational programs to provide an adequate supply of qualified personnel to carry out the purpose of the Act. On July 10, 1975, the Department issued regulations to implement this authority (42 CFR Part 86, 40 FR 29076). The Assistant Secretary for Health, with the approval of the Secretary of Halth, Education, and Welfare is proposing to further implement this authority by awarding grants for the establishment of educational resource centers. The specific project requirements for educational resource center grants are set forth in § 86.13(c) of the proposed rule, with the most distinctive feature being a cooperative arrangement for occupational safety and health training between a medical school, a school of nursing, a school of public health or its equivalent and a school of engineering or its equivalent. The educational resource center may be within one educational institution or agency, or comprised of an association of two or more institutions or agencies.

Funds available for this program in fiscal year 1977 are 2.25 million and it is intended to fund 4 or 5 centers. Ultimately, it is expected, depending upon the availability of funds, to support 10 educational resource centers, at least one in each Department of Health, Education, and Welfare region.

It is, therefore, proposed to amend Part 86 of Title 42, Code of Federal Regulations, as set forth below, effective on the date of republication of the amendments in the FEDERAL REGISTER.

(Catalog of Federal Domestic Assistance Program No. 13.263, Occupational Safety and Health Training Grants.)

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: March 8, 1977.

JAMES F. DICKSON,
Acting Assistant Secretary for Health.

Approved: May 11, 1977.

JOSEPH A. CALIFANO, Jr.,
Secretary.

1. In § 86.10, a new paragraph (c) is added to read as follows:

§ 86.10 Nature and purpose of training grants.

* * * * *

(c) *Educational Resource Center Grant.* An educational resource center grant is an award of funds to an eligible institution or agency, hereinafter called the "grantee," to pay part or all of the costs of organized identifiable activities, hereinafter termed the "project," that are undertaken to provide for the combination of long-term and short-term training activities as described in § 86.13 (c) of this subpart.

2. In § 86.11, paragraph (b) is revised to read as follows:

§ 86.11 Eligibility.

* * * * *

(b) *Projects eligible for long-term or short-term training grants or educational resource center grants.* Any project found by the Secretary to be a long-term training project within the meaning of § 86.10(a) or a short-term training project within the meaning of § 86.10 (b) or an educational resource center grant project within the meaning of § 86.10(c) shall be eligible for a grant award. However, no applicant is eligible for assistance for a separate training project grant in any project period in which it receives an educational resource center grant. Nothing in the section shall prevent an existing training grant from

being incorporated into an educational resource center grant award.

3. In § 86.13, a new paragraph (c) is added to read as follows:

§ 86.13 Project requirements.

* * * * *

(c) In addition to the requirements set forth in paragraphs (a), (b)(1), and (b)(3) (ii) (iii) and (iv) of this section, an approvable application for an educational resource center grant must contain each of the following, unless the Secretary determines that the applicant has established good cause for its omission:

(1) A description, supported by appropriate documents, of cooperative arrangements to conduct an educational resource center among a medical school (with an established program in preventive or occupational medicine), a school of nursing, a school of public health or its equivalent, and a school of engineering or its equivalent. Other schools or departments with relevant disciplines and resources—e.g., toxicology, biostatistics, environmental health, law, business administration, education—may be represented and contribute as appropriate to the conduct of the total program.

(2) The identification of an educational resource center Director who possesses a demonstrated capacity for sustained productivity and leadership in occupational safety and health training who shall oversee the general operation of the educational resource center program and shall, to the extent possible, directly participate in training activities.

(3) A description of the full-time professonal staff representing various disciplines and qualifications relevant to occupational safety and health and capable of planning, establishing, and carrying out or administering training projects undertaken by the educational resource center.

(4) A description of the training and research expertise, appropriate facilities and ongoing training and research activities in occupational safety and health areas.

(5) A description of its program for conducting education and training of occupational health physicians, occupational health nurses, industrial hygienists/engineers and safety personnel. There shall be full-time students in each of these core disciplines, with a goal of a minimum total of 30 full-time students. Training may also be conducted in other occupational safety and health career categories, e.g., industrial toxicology, biostatistics, epidemiology, and ergonomics. Training programs shall include appropriate field experience including experience with public health and safety agencies and labor-management health and safety activities.

(6) A specific plan for making an impact on the curriculum taught by relevant medical specialties, including radiology, orthopedics, dermatology, internal medicine, neurology, perinatal medicine, and pathology.

(7) A description of its program to assist other institutions or agencies located within the applicant's region including schools of medicine, nursing and engineering, among others, by providing curriculum materials and consultation for curriculum/course development in occupational safety and health, and by providing training opportunities for faculty members.

(8) A specific plan for preparing, distributing, and conducting courses, seminars and workshops to provide short-term and continuing education training courses for physicians, nurses, industrial hygienists, safety engineers and other occupational safety and health professionals, paraprofessionals and technicians, including personnel of labor-management health and safety committees, in the geographical region in which the educational resource center is located. The goal shall be that the training be made available each year to a minimum of 200–250 trainees representing all of the above categories of personnel with priority given to providing occupational safety and health training to physicians in family practice, as well as in industrial practice, and industrial nurses. These courses shall be structured so that educational institutions, public health and safety agencies, professional societies or other appropriate agencies can utilize them to provide training at the local level to occupational safety and health personnel working in the workplace. Further, the educational resource center shall have a specific plan and demonstrated capability for implementing such training directly and through other institutions or agencies in the region including cooperative efforts with labor unions and industry trade associations where appropriate.

4. In § 86.14, paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f) respectively and a new paragraph (c) is added to read as follows:

§ 86.14 Evaluation and grant award.

* * * * *

(c) In the case of educational resource center grants:

(1) the criteria set forth in paragraphs (a) and (b) of this section.

(2) the degree to which the proposed project adequately provides for the requirements set forth in § 86.13(c).

[FR Doc.77-14053 Filed 5-16-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 21]

[Docket Nos. 18261; 21039]

AVAILABILITY OF LAND MOBILE CHANNELS IN THE 470–512 MHz BAND

Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Extension of time to file reply comments.

SUMMARY: An extension of time to file reply comments to a proposed rule making concerning the availability of land mobile channels in the 470–512 MHz band in the 13 largest urbanized areas in the United States is ordered because the National Association of Radio-telephone Systems filed comments offering a proposal which may be new to the proceeding. Allowing a modest extension of time will allow interested parties to reply to the comments without significantly delaying the outcome of the proceeding.

DATES: Reply Comments must be received on or before May 23, 1977.

ADDRESSES: Send comments to: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Fred F. Fitzgerald, Common Carrier Bureau, telephone number 202–632–6450.

SUPPLEMENTARY INFORMATION:

In the Matter of Amendment of Parts 21, 89, 91 and 93 of the Rules to reflect the availability of land mobile channels in the 470–512 MHz band in the 10 largest urbanized areas of the United States.

Amendment of Part 21 of the Rules to reflect the availability of land mobile channels in the 470–512 MHz band in 13 urbanized areas of the United States. (See 42 FR 13309.).

ORDER EXTENDING TIME TO FILE REPLY COMMENTS

Adopted May 6, 1977.

Released May 12, 1977.

1. Presently before the Chief, Common Carrier Bureau, is a motion by the National Association of Radiotelephone Systems (NARS), filed on May 2, 1977, requesting an extension of time until May 31, 1977 to file reply comments to the above-referenced docket. The Commission adopted a Memorandum Opinion and Order and Notice of Proposed Rule Making in the above-entitled matter on January 12, 1977, which was released on January 31, 1977.

2. In its initial comments filed in the above-captioned proceeding on April 8, 1977, NARS requested that the Commission adopt a "carriers carrier" approach to licensing the referenced frequencies, in contrast to the licensing plan proposed by the Commission in its January 12, 1977 order. The NARS comments offer a proposal which may be new to the proposed rule making proceeding. We desire reply comments to the NARS and other comments. However, if the Commission were to adopt the substance of the NARS proposal, we think it preferable that the Commission first issue a Further Notice of Proposed Rule Making. Therefore, we conclude that the extension of time requested by NARS will not serve the purpose of expediting the above-referenced docket.

3. Nevertheless, we realize that interested parties may be aware of the NARS request for an extension of time and may have expected the Bureau to grant the extension requested. We find that it is in the public interest to allow

a modest time extension in order that interested parties who may have expected to have additional time after May 9, 1977 to file reply comments have an opportunity to file their comments.

3. Accordingly, *it is ordered*, pursuant to delegated authority under § 0.303 of the Commission's Rules, that the time to file reply comments is extended from May 9, 1977 to May 23, 1977.

FEDERAL COMMUNICATIONS COMMISSION,
WALTER R. HINCHMAN,
Chief, Common Carrier Bureau.

[FR Doc.77-14054 Filed 5-16-77;8:45 am]

[47 CFR Part 68]

CONNECTION OF TERMINAL EQUIPMENT TO TELEPHONE NETWORK

Telephone Equipment Registration; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Extension of time for filing comments.

SUMMARY: A motion has been filed to extend for a period of ninety days, the time for filing comments in this proceeding. In order to give the parties an opportunity to respond to this motion, the existing deadline for filing comments is being extended fifteen days.

DATES: Comments must be received no later than May 25, 1977 and reply comments must be received no later than June 14, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Michael S. Slomin, Policy and Rules Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554 (202-632-9342).

Adopted: May 5, 1977.

Released: May 9, 1977.

Memorandum Opinion and Order. In the matter of amendment of Part 68 of the Commission's rules (Telephone Equipment Registration) to Specify Standards for and Means of Connection of Telephone Equipment to Lamp and/or Annunciator Functions of Systems, Docket No. 21182, RM-2829.[1]

1. American Telephone and Telegraph Company (AT&T) has filed a motion to extend the time for filing comments in this proceeding from the present specified date of May 10, 1977 until August 10, 1977 (ninety days). AT&T claims that this additional time is necessary because the Commission specified five complex and far reaching issues in its notice of proposed rulemaking, FCC 77-228, released April 1, 1977, which require extensive review and analysis by AT&T's staff.

2. In view of the substantial extension which is sought, interested parties may wish to be heard as to the advisability of granting it. However, such parties may not have an opportunity to respond to AT&T's motion prior to the May 10, 1977 due date for comments herein. To allow such responses, we are granting a fifteen day extension of time, without prejudice to a final disposition of the motion.

3. Accordingly, pursuant to §§ 0.303 and 1.46 of the Commission's rules, 47 CFR 0.303, 1.46: *It is hereby ordered*, That interested parties may file comments on the issues and proposed rules of Docket No. 21182 no later than May 25, 1977, and that replies to such comments may be filed no later than June 14, 1977.

FEDERAL COMMUNICATIONS COMMISSION,
WALTER R. HINCHMAN,
Chief, Common Carrier Bureau.

[FR Doc.77-14071 Filed 5-16-77;8:45 am]

[1] See 42 FR 20315, April 19, 1977.

[47 CFR Part 73]

[Docket No. 20337; RM-2296]

FM BROADCAST STATION IN BAXLEY, GEORGIA

Proposed Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order and Further Notice of Proposed Rule Making.

SUMMARY: Memorandum Opinion and Order denying assignment of a proposed wide coverage Class C FM channel to Baxley, Georgia (1970 pop. 3,503) because of failure of petitioner to provide required justification. Class A channel, which has subsequently become available for assignment is proposed instead.

DATES: Comments must be received on or before June 24, 1977 and reply comments must be received on or before July 14, 1977.

ADDRESS: Send comments to Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

James Gross, Broadcast Bureau, 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: May 10, 1977.

Released: May 17, 1977.

Memorandum opinion and order and Further Notice of Proposed Rule Making. In the matter of amendment of § 73.202 (b), Table of Assignments, FM Broadcast Stations. (Baxley, Georgia), Docket No. 20337, RM-2296.

1. The Commission has before it comments in support of a first FM assignment to the Georgia community of Baxley (1970 pop. 3,503), as proposed in the Notice of Proposed Rule Making, 40 FR 4939 (1975). The Notice was in response to a 1973 petition by WHAB Radio, Inc. ("WHAB"), licensee of AM Station WUFE, Baxley, for the assignment of Channel 233 to Baxley.[1]

2. This assignment would have required substitution of Channel 228A for 232A at Sandersville, Georgia, and Channel 244A for 228A at Sparta, Georgia, The Notice erroneously stated that both channels were unapplied for, but in fact an application had been tendered by Radio Station WSNT, Inc., for Channel 232A at Sandersville, and the station was licensed on April 1, 1976. Any change in channels at Sandersville would now require reimbursement to WSNT for its costs in changing frequency.

3. Subsequent to the Notice, Channel 240A became available for assignment to Baxley as a result of changes made in the *Atlanta* decision (n. 1, supra). It is the Commission's usual procedure to assign Class A channels to small communities to conserve spectrum space. In the Baxley Notice, we said:

Class C vs. Class A Channel. Petitioner supports assignment of Class C channel to Baxley on the basis that there are presently no Class A channels that can be used at Baxley that would not cause the deletion of or changes in channel assignments elsewhere or changes in proposed rulemaking petitions. Additional support on this issue is requested from petitioner.

No such support was forthcoming. The Baxley petitioner has offered no showing of special circumstances to support a Class C assignment at Baxley. It appears that a Class A assignment would provide significant first service benefits at Baxley. Accordingly, we shall deny the proposed Class C assignment, and ask for comments on the assignment of Channel 240A at Baxley.[2] This proposal has the advantage of not requiring any other assignment changes or reimbursement. Petitioner should state whether it intends to apply for a station on this channel, if it is assigned.

4. Accordingly, it is proposed to amend the FM Table of Assignments (§ 73.202 (b) of the Commission's rules and regulations) to read as follows for the community listed below:

[1] A proposal by Broadcast Good Music Committee ("BGMC") to assign a seventh FM channel to Atlanta, Georgia, would have required substitution at seven Georgia communities and the assignment of Channel 259 to Baxley. That proposal was denied by the Commission, 49 F.C.C. 2d 1280 (1974), and affirmed *per curiam* by the U.S. Court of Appeals, District of Columbia Circuit, Case No. 75-1926 (October 29, 1976). BGMC opposed the WHAB proposal.

[2] Channel 234 has also become available for assignment at Baxley, but we shall not propose it for the same reasons as Channel 233 was denied. In addition, Channel 234 would preclude a proposal before us now for FM service at McRae, Georgia.

City	Channel No.	
	Present	Proposed
Baxley, Ga.[1]		240A

[1] To comply with separation requirements, the transmitter site for Baxley would have to be 8 km (5 mi) south-southwest of the community. Proponents should show the reasonable availability of a site which would be free of obstruction to the propagation of FM signals to the community. See FCC rule 208(a)(4).

5. *It is further ordered,* That the proposal to assign Channel 233 to Baxley, Georgia, issued by the Notice of Proposed Rule Making, 40 FR 4939 (1975), is hereby denied.

6. The Commission's authority to institute rulemaking proceedings; showings required; cut-off procedures; and filing requirements are contained below and are incorporated herein.

7. Interested parties may file comments on or before June 24, 1977, and reply comments on or before July 14, 1977.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in this notice of proposed rulemaking.

2. *Showings required.* Comments are invited on the proposal(s) discussed in this notice of proposed rulemaking. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420 (d) of Commission rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in this notice of proposed rulemaking. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc.77-14068 Filed 5-16-77;8:45 am]

[47 CFR Part 73]

[Docket No. 21110; RM 2744]

TELEVISION BROADCAST STATIONS, OHIO

Proposed Change in Table of Assignment; Dismissal of Proposal

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order.

SUMMARY: Proposed assignments of TV Channel *63 to Maplewood, Channel *58 to Georgetown, Channel *17 to Celina and Channel *64 to Conneaut, Ohio are dismissed at request of petitioner, Ohio Educational Television Network Commission. As a result of this action, the Television Table of Assignments remains unchanged.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Gordon Godfrey, Broadcast Bureau (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order—Proceeding terminated. In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Maplewood, Georgetown, Celina, Conneaut, Ohio), Docket No. 21110, RM-2744.[1]

Adopted: May 3, 1977.

Released: May 9, 1977.

1. The Commission, by the Chief, Broadcast Bureau, has before it the Notice of Proposed Rule Making adopted in this proceeding on February 4, 1977, and a responsive filing from the petitioner, the Ohio Educational Television Network Commission.

2. In response to the petitioner's request, the Commission proposed to assign and reserve for noncommercial educational use channels at Maplewood (Channel *63), Georgetown (Channel *58), Celina (Channel *17) and Conneaut (Channel *64). Petitioner requested the assignments in order to operate high-powered UHF translators in these communities. Now, petitioner indicates that it no longer wishes to proceed with the assignments.

3. The Commission's decision to begin the proceeding was based on petitioner's request. Now that petitioner no longer desires to proceed in this manner, there is no reason not to terminate the proceeding. As a result of this action, § 73.606(b) of the Commission's rules, the Television Table of Assignments, remains unchanged.

4. *Accordingly, it is ordered,* That the subject proposal is dismissed and the proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.77-14070 Filed 5-16-77;8:45 am]

[1] See 42 FR 9039, February 14, 1977.

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CIVIL AERONAUTICS BOARD

[Order 77-5-41; Docket 27573, Agreement C.A.B. 26591, R-1 through R-6]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Specific Commodity Rates

Issued under delegated authority May 9, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

As set forth in the attachment, the agreement names three additional specific commodity rates under existing specific commodity rate descriptions, and three new commodity descriptions and rates, reflecting reductions from general cargo rates; and was adopted pursuant to unprotested notice to the carriers and promulgated in an IATA letter dated April 27, 1977.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, *It is ordered*, That:

Agreement C.A.B. 26591, R-1 through R-6, is approved, provided that (a) approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board unless within such period a petition for review is filed or the Board gives notice it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By James L. Deegan, Chief, Passenger and Cargo Rates Division, Bureau of Economics.

PHYLLIS T. KAYLOR,
Secretary.

Attachment

Agreement CAB	Specific commodity item No.	Description and rate [1]
26591:		
R-1	6831	Plastic packaging material: 164 c/kg, minimum weight 100 kg, 121 c/kg, minimum weight 1,500 kg, from Helsinki to New York. 164 c/kg, minimum weight 100 kg, 121 c/kg, minimum weight 2,000 kg, from New York to Helsinki.
R-2	0003	Foodstuffs, spices and beverages, excluding caviar and hatching eggs: 128 c/kg, minimum weight 1,000 kg, from Los Angeles to Noumea.
R-3 [2]	2211	Yarn, thread, and/or fibres, natural and synthetic; cloth, exclusively in bales, bolts or pieces, not further processed or manufactured; clothing and footwear; textile manufactures—namely articles or material made principally of textiles: 169 c/kg, minimum weight 2,210 kg, from Hong Kong/Taipei to Los Angeles. 194 c/kg, minimum weight 2,015 kg from Hong Kong/Taipei to Chicago. 205 c/kg, minimum weight 2,021 kg, from Hong Kong/Taipei to New York.
R-4	4309	Electronic calculating machines: 249 c/kg, minimum weight 250 kg, from Delhi to New York.
R-5	4421	Record players and tape recorders/players: 249 c/kg, minimum weight 500 kg, from Delhi to New York.
R-6	4444	Transistor radios: 249 c/kg, minimum weight 250 kg, from Delhi to New York.

[1] Subject to applicable currency conversion factors as shown in tariffs.
[2] Shipped in type 2 containers.

[FR Doc.77-14033 Filed 5-16-77;8:45 am]

PRIORITY AND NONPRIORITY DOMESTIC SERVICE MAIL RATES—PHASE 2

[Order 77-5-47, Docket 23080-2]

Order To Show Cause

Adopted by the Civil Aeronautic Board at its office in Washington, D.C. on the 11th day of May, 1977.

By Order 74-1-89, January 16, 1974, the Board established temporary domestic service mail rates for sack mail and standard and daylight container mail, container minimum chargeable weights, and pickup and delivery charges effective on and after March 28, 1973.[1] On April 1, 1977, United Air Lines, Inc., (United) filed a petition requesting an amendment of this order to include the type LD-X narrow-bodied aircraft container as an additional mail container in selected markets. United also requests that the LD-X pivot weight be established at 800 pounds and that pickup and delivery charges be set at $5. The carrier proposes to offer this new container in daylight service between selected airports in DC-8 combination aircraft, subject to space availability.

In support of this request, United states that the relief requested is necessary in order that the carrier may utilize the LD-X container for the carriage of mail and be compensated at the temporary rates currently in effect for mail services. Also, United contends that its introduction of the LD-X container will provide the U.S. Postal Service (USPS) with on-airport container loading and unloading capability, thereby saving costs, and will enable the USPS to expand its daylight container mail program to many new city-pair markets. The 800 pounds pivot weight is based on the density applicable to the LD-3 container (13.3 pounds per cubic foot) multiplied by the capacity (61 cubic feet) of the LD-X container. The carrier further cites Orders 74-3-84, 74-7-116 and 74-11-16 in which similar relief was provided for the B, LD-11 and M-1 type containers, respectively.

The USPS, in its answer, supports certain aspects of United's petition and objects to others. While the USPS does not object to the Board establishing temporary service mail rates for LD-X containerized mail service, it does object to limiting the service to markets selected by United and to daylight service only. In the USP's view there is no basis for such a selective offering because it contends that United has had sufficient experience with the LD-X container to provide the service systemwide. Similarly the USPS does not object to a pivot weight of 800 pounds, but requests that a lower pivot weight of 700 pounds be established for standard container service, based on the findings contained in the Initial Decision of the Administrative Law Judge.[2] The USPS also refers to the ALJ's finding in the Initial Decision proposing to eliminate on-airport pickup and delivery charges, but does not object to their retention for temporary rate purposes.

[1] Amended by Order 76-12-60, December 10, 1976, fixing the currently effective temporary rates.
[2] Served October 27, 1976, pp. 112-113.

Subsequently, on April 21, 1977, United filed a motion for leave to file an otherwise unauthorized document in reply to the USPS answer.[3] The carrier states therein that the offering of the LD–X container is a limited one because it represents a new program of one container type in one aircraft type—the DC–8 combination aircraft. United wishes to begin by moving carefully and assessing initial development of this program; and, its offering, both as to market and time of tender, merely reflects its estimate of LD–X space and equipment availability for use by the USPS.

Upon consideration of the pleadings and all other relevant matters, the Board concludes that Order 74–1–89 should be amended to incorporate the LD–X container as requested by United. With respect to the USPS proposal for separate daylight and standard pivot weights, we are not persuaded to make such a distinction at this time. Under the current temporary rate structure, the pivot weights for each type of container used to carry mail are not distinguished by class of service so that the daylight and standard service pivot weight for a given container is uniform. The determination of whether daylight and standard container services should have different pivot weights is under consideration in the Domestic Service Mail Rate Investigation (along with many other isues regarding the level and structure of the rates for mail) and the reasonableness of such distinction will be determined there. In the interim, we are not persuaded to depart from the current rate structure. Accordingly, we propose to establish a uniform pivot weight of 800 pounds for the LD–X container pending our final decision on this proceeding.

The proposed $5 charge for pickup and delivery services does not appear to be unreasonable. This same charge is currently in effect for the LD–W container, which the LD–X container closely resembles.[4] We, therefore, tentatively find United's proposed charge of $5 to be fair and reasonable for temporary rate purposes.

In consideration of the foregoing, the Board tentatively finds and concludes that the rates and charges proposed herein for the LD–X container are fair and reasonable for the purpose of establishing temporary rates in this proceeding. When adopted, these rates will apply systemwide to such mail as is carried in LD–X containers, subject to the terms and conditions set forth in Appendix A of Order 74–1–89. However, it should be reiterated that the establishment of these rates, in itself, will neither authorize nor require any air carrier to provide LD–X container service for the Postmaster General. (See, e.g. Order 75–2–110.) A rate order does not purport to impose any service obligations.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a) and 406 thereof, and the regulations promulgated in 14 CFR Part 302;

It is ordered, That: 1. All interested persons, particularly the Postmaster General and all carrier parties of record in Docket 23080–2, are directed to show cause why the Board should not adopt the foregoing findings and conclusions and fix the temporary rates and charges specified herein, pending the fixing of final rates and charges in this investigation, by amending subparagraphs (e) and (g) of ordering paragraph 3 of Order 74–1–89, January 16, 1974, by changing "LD–W" in the columns headed "Container Type" to "LD–W/LD–X";

2. Further procedures herein shall be in accordance with the Rules of Practice, 14 CFR Part 302, and if there is any objection to the rates and charges or to the other findings and conclusions proposed herein, notice thereof shall be filed within 8 days, and, if notice is filed, written answer and supporting documents shall be filed within 15 days, after the date of service of this order;

3. If notice of objection is not filed within 8 days, or if notice is filed and answer is not filed within 15 days, after service of this order, or if an answer timely filed raises no material issue of fact, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of an order fixing temporary service mail rates and the Board may enter an order incorporating the findings and conclusions proposed herein, and fix and determine the temporary rates herein specified;

4. If notice of objection and answer are filed presenting issues for hearing, issues going to the establishment of the fair and reasonable temporary rates herein shall be limited to those specifically raised by such answers except as otherwise provided in 14 CFR section 302.307; and

5. This order shall be served upon all parties to Docket 23080–2.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77–14032 Filed 5–16–77;8:45 am]

[Docket 30656, 30657; Order 77–5–65]

ALIA—THE ROYAL JORDANIAN AIRLINES CORP. AND SYRIAN ARAB AIRLINES

Order Regarding Air Carrier Permit

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 13th day of May, 1977.

On March 24, 1977, the Royal Jordanian Airlines (ALIA) and Syrian Arab Airlines (Syrianair) filed a motion to consolidate their above noted dockets and concurrently filed a joint motion for an order to show cause why the Board should not issue foreign air carrier permits for joint service between Syria and Jordan, on the one hand, and the United States, on the other.[1] The joint request is an application for the routes provided in air services agreements that were effected by an exchange of diplomatic notes between the United States Government and the Governments of Syria and Jordan on March 15, 1977.[2]

On May 10, 1977, the United States Department of State filed its comments supporting the expeditious handling of the instant application by show-cause procedures.

Upon consideration of all of the relevant facts and pleadings, we have decided to grant the request for consolidation of Dockets 30656 and 30657. In addition, we have decided to deny the joint request for the issuance of a show-cause order and to set the applications for hearing before an administrative law judge as promptly as the Boards' docket permits.

Our decision herein is based on the Board's policy not to utilize show-cause procedures for first certification in foreign air carrier cases. The rationale behind this policy is the belief that the issue of fitness should only be determined after all the evidence is explored in a oral proceeding.[3] Moreover, we believe that the hearing process will be beneficial in resolving certain issues present in this case. These issues include, among other things, Syrianair's fitness; the need for holding out provisions for the proposed services; the question of insurance liability arising from the operation of joint services; the extent that the charter authority requested conforms with the intergovernmental agreements; the degree, if any, to which the Board should exercise jurisdiction over the intercarrier agreement between ALIA and Syrianair for joint services to and from the United States; and what conditions, if any, should be imposed on any authority granted.

While we understand the Department of State desires to employ show-cause procedures, because of the first certification issue, we do not deem it advisable to dispense with a formal hearing. In any event, under an expedited hearing procedure, the applicants could receive their permits as fast or faster than by show-cause procedures.[4]

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[3] We shall grant the motion as a matter of discretion.

[4] The LD–W container has an internal capacity of approximately 77 cubic feet while the LD–X container has an internal capacity of approximately 61 cubic feet.

[1] ALIA currently holds a 402 permit to engage in nonscheduled foreign air transportation between the U.S. and Jordan via certain intermediate points. See Orders 75–3–85 and 76–7–30. Syrianair does not hold a permit under section 402 to provide service to the United States.

[2] The notes granted scheduled route rights to the Government of Jordan and specified scheduled route rights consistent with the Air Transport Services Agreement between the United States Government and the Government of Syria.

[3] The only exception to this rule is the U.S.-Canadian transborder carriers. However, those cases involved special circumstances which are not present. See Order 74–6–30, June 6, 1974.

[4] For example, see Docket 25862, Aeroflot Soviet Airlines, wherein the Board issued a permit to the applicant in approximately 60 days from date of hearing.

Accordingly, *it is ordered*, That:

1. The joint motion of the Royal Jordanian Airlines Corporation and Syrian Arab Airlines for an order to show cause be and it hereby is denied;

2. The joint motion of the Royal Jordanian Airlines Corporation and Syrian Arab Airlines to consolidate Dockets 30656 and 30657 be and it hereby is granted; and

3. The applications of the Royal Jordanian Airlines Corporation (Docket 30656) and Syrian Arab Airlines (Docket 30657) be and they hereby are set for hearing before an administrative law judge of the Board at a time and place to be designated hereafter.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-14196 Filed 5-16-77;8:45 am]

CIVIL SERVICE COMMISSION

FEDERAL ENERGY ADMINISTRATION

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Federal Energy Administration to fill by noncareer executive assignment in the excepted service the position of Associate Deputy Administrator, Office of the Deputy Administrator for Policy.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-13866 Filed 5-16-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Grant of Authority To Make A Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Executive Assistant to the Secretary (Policy Development), Immediate Office, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION.
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-13868 Filed 5-16-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the Secretary, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-13862 Filed 5-16-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Executive Assistant to the Secretary (Program Goals), Immediate Office, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-13867 Filed 5-16-77;8:45 am]

DEPARTMENT OF INTERIOR

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Interior to fill by noncareer executive assignment in the excepted service on a temporary basis the position of Assistant to the Secretary, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-13865 Filed 5-16-77;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Office of Management and Budget to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the Deputy Director, Office of the Director.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-14085 Filed 5-16-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Army

TOOELE ARMY DEPOT, UTAH

Notice of Filing of Final Environmental Impace Statements

In compliance with the National Environmental Policy Act of 1969, the Army on April 29, 1977, provided the Council on Environmental Quality with Final Environmental Impact Statements concerning the Transportation of Chemical Material from Tooele Army Depot (North Area), Utah, to Tooele Army Depot (South Area), Utah, and the Dugway Proving Ground, Utah, to Tooele Army Depot (South Area), Utah.

Copies of the Statements have been forwarded to concerned Federal, State, and local agencies. Interested organizations or individuals may obtain copies from Commander, USA Armament Material Readiness Command, Attn.: DRSAR-ASN (Mr. Neil Baker), Rock Island Arsenal, IL 61201 (phone 309-794-5916).

In the Washington area, inspection copies may be seen in the Environmental Office, Office of the Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, D.C. 20310 (phone 202-694-1163).

Dated: April 29, 1977.

BRUCE A. HILDEBRAND,
Deputy for Environmental Affairs, Office of the Assistant Secretary of the Army (Civil Works).

[FR Doc.77-13998 Filed 5-16-77;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

ERDA-OWNED FOREIGN INVENTIONS

Availability for Licensing

The inventions listed below are the subject of U.S. Government-owned foreign patents and patent applications in the custody of the U.S. Energy Research and Development Administration and are available for licensing in accordance with ERDA Patent Licensing Regulations (Title 10 CFR 781.61):

ARGENTINA

ARGENTINE PATENT

208,118, Method for selectively orienting induced fractures in subterranean earth formations.

AUSTRALIA

AUSTRALIAN PATENTS

465,220, Compact dialyzer.
467,175, Folded membrane dialyzer.
467,849, Rotor for multistation photometric analyzer.
468,637, Multisensor particle sorter.
470,212, Glass polymer composites.
470,383, Hemodialyzer with tapered slit blood ports and baffles.
473,950, Reverse osmosis process using cross-linked aromatic polamide membranes.
475,215, Solder leveling.
475,853, Dynamic multistation photometer-fluorometer.
478,144, Dynamic multistation photometric analyzer for seriological testing.

478,367, Portable dynamic multistation photometer-fluorometer
478,804, Rotor for fluorometric measurement in fast analyzer of rotary type
480,952, Pumpable rockbolt method
481,171, Compact dynamic multistation photometer utilizing disposable cuvette rotor

AUSTRALIAN APPLICATION

83,415/75, Radiant energy collector

AUSTRIA

AUSTRIAN PATENTS

334,115, Compact dynamic multistation photometer utilizing disposable cuvette rotor
334,116, Automated sample-reagent loader

BELGIUM

BELGIAN PATENTS

833,846, Electrochemical cell assembled in discharged state
836,171, Process for solidifying nuclear materials
838,515, Method of preparing electrodes with porous current collector structure and solid reactants for secondary electrochemical cells
838,516, Photomultiplier tube gain regulating system
839,896, Method and apparatus for producing synthetic fuels from solid waste
840,425, Folded membrane dialyzer with mechanically sealed edges
840,426, Method for solidifying liquid radioactive wastes
841,140, Method for dissolving plutonium dioxide
841,665, Ferric ion as a scavenging agent in solvent extraction process
843,518, Method and apparatus for growing HgI_2 crystals
843,519, Purification of HgI_2 for nuclear detector fabrication
844,817, Recovery of cesium and palladium from nuclear reactor fuel processing waste
845,200, Method and apparatus for thermal energy storage
845,620, Bidentate organophosphorus solvent extraction process for actinide recovery and partition

CANADA

CANADIAN PATENTS

987,116, Pumpable rockbolt method
987,128, Portable dynamic multistation photometer-fluorometer
988,321, Compact dynamic multistation photometer utilizing disposable cuvette rotor
989,525, Method of detecting a fuel element failure
989,616, In situ coal bed gasification
989,623, Oxidative stripping process for the recovery of uranium from wet-process phosphoric acid.
991,840, Chemical plating method for preparing 252 cf neutron source material
991,861, Chemical digestion of low-level solid nuclear solid waste material
991,885, Automated sample-reagent loader
994,999, Freeze drying method for preparing radiation source material
995,812, Computer generated optical sound tracks
996,526, Centrifugal particle elutriator and method of use
997,168, Method and apparatus for measuring pressures in fluid lines
999,686, Energy absorbing structure to prevent damage to the vessel wall as a result of the effects of a sodium-water reaction in a sodium-steam generator
999,757, Isotope-shift zeeman effect spectrometer
999,999, Refuse and sewage polymer impregnated concrete
1,000,421, Tag gas capsule with magnetic piercing device
1,000,876, Method of locating a leaking fuel element in a fast breeder power reactor
1,003,670, Diffraction smoothing aperture for an optical beam
1,004,662, Method for laser drilling subterranean earth formations
1,004,880, Ductile superconducting alloys
1,005,156, On-line ultrasonic gas entrainment monitor
1,006,378, Simplified rotor for fast analyzer of rotary cuvette type
1,006,631, Radioactive waste storage
1,007,945, Radiant energy collector

CANADIAN APPLICATIONS

252,867, Means of increasing efficiency of CPC solar energy collector
256,012, Reducing heat loss from the energy absorber of a solar collector
257,569, Solar collector with improved thermal concentration
271,829, Solar concentrator with restricted exit angles
271,835, Solar radiation absorbing material

FRANCE

FRENCH PATENTS

71.37,718, Removal of plutonium from plutonium hexafluoride-uranium hexafluoride mixtures
72.09,268, Thermoluminescence dosimeter system
72.36,027, Ferroelectric ceramic longitudinal electrooptic scattering mode devices
72.36,450, Process for the separation of components from gas mixtures
72.42,460, Ferroelectric-type optical filter
73.34,038, Chemical digestion of low-level solid nuclear solid waste material
73.40,330, Impregnated chemical separation particles
73.42,891, Pumpable rockbolt method

FRENCH APPLICATIONS

75/23,210, Radiant energy collector
76/19,437, Means of increasing efficiency of CPC solar energy collector
76/22,366, Reducing heat loss from the energy absorber of a solar collector.
76/22,367, Solar collector with improved thermal concentration.
77/6307, Solar concentrator with restricted exit angles.
77/6832, Solar radiation absorbing material.

GERMANY

GERMAN PATENTS

1,962,027 System providing stable pulse display.

GERMAN APPLICATIONS

P 25 33 530.2, Radiant energy collector.
P 26 28 557.4, Means of increasing efficiency of CPC solar energy collector.
P 26 33 029.0, Solar collector with improved thermal concentration.
P 26 33 030.3, Reducing heat loss from the energy absorber of a solar collector.
P 27 09 284.8, Solar concentrator with restricted exit angles.
P 27 09 837.9, Solar radiation absorbing material.

GREAT BRITAIN

BRITISH PATENTS

1,420,044, Zeeman effect absorption spectrometer.
1,436,921, X-ray image intensifier phosphor.
1,443,127, Pulsed multiline CO_2 laser oscillator appartus and method.
1,444,139, Filler alloys for fluxless brazing aluminum and aluminum alloys.
1,445,723, Ductile superconducting alloys.
1,446,762, Rotor for fluorometric measurements in fast analyzer of rotary type.
1,447,395, Portable dynamic multistation photometer-fluorometer.
1,448,789, Diagnoses of disease states by fluorescent measurements utilizing scanning laser beams.
1,449,080, Electrolyte for applying barrier anodic coatings.
1,449,195, Pumpable rockbolt method.
1,452,225, Formaldehyde based disinfectants.
1,455,203, Centrifugal particle elutriator and method of use.
1,456,599, Potential sensing cell analyzer.
1,457,325, Solder leveling.
1,457,650, Method for concentrating macromolecules.
1,458,132, Chemical trap.
1,465,241, Method for improving the extraction properties of a tributyl phosphate solution.
1,465,884, Process for radiation grafting hydrogels onto organic polymeric substrates.
1,466,518, Intrusion detector self-test system.
1,466,806, Cathode for a secondary electrochemical cell.
1,466,841, Encapsulated thermonuclear fuel.
1,467,887, Method of fabricating graphite for use as a skeletal prosthesis and product thereof.
1,469,024, Charge storage device.
1,470,123, Method of locating a leaking fuel element in a fast breeder power reactor.
1,470,280, Superconducting articles of manufacture and method of producing same.
1,475,245, Indentification of failed fuel element.

BRITISH APPLICATIONS

20,481/75, Radiant energy collector.
20,790/76, Means of increasing efficiency of CPC solar energy collector.
26,778/76, Reducing heat loss from the energy absorber of a solar collector.
26,779/76, Solar collector with improved thermal concentration.
6,076/77, Solar concentrator with restricted exit angles.
6,077/77, Solar radiation absorbing material.

INDIA

INDIAN PATENT

140,416, Portable dynamic multistation photometer-fluorometer.

ISRAEL

ISRAELI PATENTS

40,449, Reverse osmosis process using cross-linked aromatic polamide membranes.
42,632, Dynamic multistation photometric analyzer for serological testing.
42,689, Dynamic multistation photometer-fluorometer.
43,372, Compact dynamic multistation photometer utilizing disposable cuvette rotor.
43,681, Rotor for fluorometric measurements in fast analyzer of rotary type.
43,750, Portable dynamic multistation photometer-fluorometer.
44,583, Automated sample-reagent loader.

ISRAELI APPLICATION

47,516, Radiant energy collector.

ITALY

ITALIAN PATENTS

999,500, Rotor for fluorometric measurements in fast analyzer of rotary type.
1,000,868, Portable dynamic multistation photometer-fluorometer.
1,007,912, Automated sample-reagent loader.
1,009,685, Multisided electron beam excited electrically pumped gas laser systems.
1,009,735, Solder leveling.

ITALIAN APPLICATIONS

83,630 A/76, Means of increasing efficiency of CPC solar energy collector.
83,633 A/76, Reducing heat loss from the energy absorber of a solar collector.

83,634 A/76, Solar collector with improved thermal concentration.

JAPAN

JAPANESE PATENTS

800,646, System for detecting sodium boiling in a reactor.
805,924, Radiochemical counter for bulk materials.
809,517, System providing stable pulse display.
809,670, Analytical photometer with means for measuring, holding and transferring discrete liquid volumes and method of use thereof.
809,672, Antiferroelectric voltage regulation.
810,108, Improved position sensitive radiation detector.
819,091, Scavengers for radioactive iodine.
823,996, Compact dialyzer.

JAPANESE APPLICATIONS

78,482/75, Radiant energy collector.
76–73,059, Means of increasing efficiency of CPC solar energy collector.
76–87,693, Solar collector with improved thermal concentration.
76–88,101, Reducing heat loss from the energy absorber of a solar collector.
77–22,602, Solar concentrator with restricted exit angles.
77–25,330, Solar radiation absorbing material.

PORTUGAL

PORTUGUESE PATENT

63,471, Compact fast analyzer of rotary cuvette type.

SPAIN

SPANISH PATENTS

417,075, Dynamic multistation photometric analyzer for serological testing.
420,501, Rotor for fluorometric measurements in fast analyzer of rotary type.

SPANISH APPLICATIONS

438,813, Radiant energy collector.
450,085, Reducing heat loss from the energy absorber of a solar collector.
450,086, Solar collector with improved thermal concentration.

SWEDEN

SWEDISH PATENTS

72.05,169–1, High-transition-temperature subconductors in the Nb–Al–Ge system.
72.12,490–12, Ferroelectric ceramic longitudinal electrooptic scattering mode devices.
72.16,065–8, Rotor for multistation photometric analyzer.
72.16,659–8, Multisensor particle sorter.
73.11,327–6, Dynamic multistation photometer-fluorometer.
73.13,469–4, Compact dynamic multistation photometer utilizing disposable cuvette rotor.
73.16,035–0, Rotor for fluorometric measurements in fast analyzer of rotary type.
73.16,424–6, Portable dynamic multistation photometer-fluorometer.
74.04,747–3, Automated sample-reagent loader.
74.13,373–7, Method for concentrating macromolecules.

SWEDISH AMERICAN

75/7832–9, Radiant energy collector.

SWITZERLAND

SWISS PATENTS

574,735, Method of fabricating graphite for use as a skeletal prosthesis and product thereof.
575,750, Potential sensing cell analyzer.
576,136, Automated sample-reagent loader.
584,892, Compact fast analyzer of rotary cuvette type.

Copies of the foreign patents can be purchased from their respective foreign patent offices. Copies of the foreign patent applications can be purchased from ERDA for thirty cents ($0.30) per page. When ordering copies of a foreign patent or patent application it is necessary to identify the specific number and title of the patent or patent application.

Application forms for, inquiries as to and requests for a license should be directed to the Assistant General Counsel for Patents, U.S. Energy Research and Development Administration, Washington, D.C. 20545. Each application for a license should be accompanied by a ten dollar ($10) processing fee payable to the U.S. Energy Research and Development Administration.

Dated at Washington, D.C., this 6th day of May 1977.

For the U.S. Energy Research and Development Administration.

HUDSON B. RAGAN,
Acting General Counsel.

[FR Doc.77–14063 Filed 5–16–77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 728–6; OPP–50295]

CONREL, ET AL.

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 36638–EUP–1. Conrel—An Albany International Company, Norwood, Massachusetts 02062. This experimental use permit allows the use of 500 pounds of the pheromone (Z,Z)-7,11-hexadecadien-o-ol acetate and (Z,E)-7,11-hexadecadien-o-ol acetate on cotton as a confusion agent in the control of the pink bollworm. A total of 20,000 acres is involved; the program is authorized only in the States of Arizona and California. The experimental use permit is effective from April 1, 1977, to April 1, 1978. A temporary exemption from the requirement of a tolerance for residues of the active ingredient in or on cottonseed has been established.

No. 35977–EUP–1. Hoffmann–LaRoche, Inc. Nutley, New Jersey 07110. This experimental use permit allows the use of 388.5 pounds of the herbicide sodium salt of 2,3:4,6-Bis-O-(1-methylethylidene - α - L - xylo - 2 - hexulofuranonosonic acid for chemical pinching of ornamentals (evergreen and deciduous azaleas, begonias, and fuchsias grown in greenhouse and field nurseries), and as a plant growth retardant on hedges, shrubs, and other ornamentals in outdoor locations. A total of 92.5 acres is involved; the program is authorized only in the States of Alabama, California, Florida, New Jersey, North Carolina, Ohio, Oregon, Texas, and Washington. The experimental use permit is effective from April 7, 1977, to April 7, 1978.

No. 39777–EUP–1. Ethyl Corporation, Richmond, Virginia 23219. This experimental use permit allows the use of 2,000 pounds of the microbiocide bromine chloride to evaluate disinfection of effluent in sewage disposal plants. A 100 gpm slip stream of nondisinfected plant effluent from the secondary clarifier will be treated at a dose of 7.5 ppm average for 210 days. Approximately 30 million gallons of effluent are to be treated; the program is authorized only in the State of Virginia. The experimental use permit is effective from April 7, 1977, to April 7, 1978.

Interested parties wishing to review the experimental use permits are referred to Room E–315, Registration Division (WH–567), Office of Pesticide Programs, EPA, 401 M St. SW., Washington, D.C. 20460. It is suggested that such interested persons call 202/755–4851 before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

(Sec. 5, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; (7 U.S.C. 136(a) et seq.).)

Dated: May 9, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77–14006 Filed 5–16–77;8:45 am]

[FRL 728–7]

SCIENCE ADVISORY BOARD, ECOLOGY ADVISORY COMMITTEE

Open Meeting

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Ecology Advisory Committee of the Science Advisory Board will be held June 6–7, 1977, beginning at 9:00 a.m., the Administrator's Conference Room (Room 1101), Waterside Mall West Tower, 401 M Street SW., Washington, D.C.

This is the twelfth meeting of the Ecology Advisory Committee. The agenda includes a report on the Science Advisory Board activties; responses to the Committee's review of EPA's draft "National Ecological Effects Research Program 1978–1982" and to the Committee's Advisory Statement, "Ecosystem Research Can Save Money"; discussions relative to the "Draft Sulfates Research Plan—Ecological Effects," and to the program plan, "Biological and Climate Effects Research (BACER)—Effects of Stratospheric Modification;" presentations on selected extramural research projects; discussions on collection and maintenance of scientific specimens, items for the Committee's future consideration; and member items of interest.

The meeting is open to the public. Any member of the public wishing to attend, participate, or obtain information should contact Dr. J. Frances Allen, Executive Secretary, Ecology Advisory Committee, (703) 557–7720.

Dated: May 9, 1977.

LLOYD T. TAYLOR,
Acting Staff Director,
Science Advisory Board.

[FR Doc.77–14003 Filed 5–16–77;8:45 am]

[FRL 729-2; OPP-00052]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

Meeting

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Notice of meeting.

SUMMARY: There will be a two-day special subcommittee meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel from 9:30 a.m. to 4:30 p.m. daily on Thursday, June 2, and Friday, June 3, 1977. The meeting will be held in the Department of Pathology Conference Room, School of Medicine, University of California, San Francisco, California. The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (WH-567), Room E-315, EPA, 401 M St., SW., Washington, D.C. 20460, telephone 202-755-4851.

SUPPLEMENTARY INFORMATION: In accordance with section 25(d) of the amended FIFRA, the Scientific Advisory Panel will comment on the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) prior to implementation. The purpose of this meeting is to discuss the following topic:

Advance draft of the subpart on Hazard Evaluation: Human and Domestic Animals of the Guidelines for Registering Pesticides in the United States.

Any member of the public wishing to attend this meeting should contact Dr. H. Wade Fowler, Jr., at the address shown above. Time will be allotted for brief comments by the public each day; interested persons should contact Dr. Fowler for special instructions regarding oral statements. Individuals who wish to file written statements are advised to submit ten copies of statements to the Executive Secretary in a timely manner to ensure appropriate consideration by the Advisory Panel. All statements will be made a part of the record and will be taken into consideration by the Panel in formulating its own comments.

All interested persons are further advised that the meeting announced in this notice is a subcommittee meeting of the Advisory Panel for the purpose of conducting preliminary reviews of draft proposed rulemaking. Formal review of topics considered by the subcommittee will be conducted by the FIFRA Scientific Advisory Panel at a later date.

(Sec. 25(d) of FIFRA, as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.); sec. 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770).)

Dated: May 12, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-14098 Filed 5-16-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. I-345]

COMMON CARRIER SERVICES INFORMATION

International and Satellite Radio Applications Accepted for Filing

MAY 9, 1977.

The Applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications if, upon further examination, it is determined they are defective and not in conformance with the Commission's rules, regulations and its policies. Final action will not be taken on any of these applications earlier than 31 days following the date of this notice. Section 309(d)(1).

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

SATELLITE COMMUNICATIONS SERVICES

341-DSE-P-77 Board of Trustees, Coast Community College District, Huntington Beach, California. For authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 33°44'00", Long. 118°00'01". Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 10 meter antenna.

342-DSE-P-77 Central Texas College, Killeen, Texas. For authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 31°07'06", Long. 97°48'39". Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 10 meter antenna.

343-DSE-P-77 Duluth-Superior Area Educational Television Corporation, Duluth, Minnesota. For authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 46°47'08", Long. 92°08'52". Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 10 meter antenna.

344-DSE-P-77 Nashville Public Television Council, Inc., Nashville, Tennessee. For authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 36°08'07", Long. 86°46'01". Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 10 meter antenna.

345-DSE-P-77 Southwest Texas Public Broadcasting Council, Austin, Texas. For authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 30°23'06". Long. 97°43'56". Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 10 meter antenna.

346-DSE-P-77 Western New York ETV Association, Incorporated, Buffalo, New York. For authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 42°56'27", Long. 78°49'28". Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 10 meter antenna.

347-DSE-P-77 RCA Alaska Communications, Inc., Shishmaref, Alaska. For authority to construct a communications satellite earth station at this location for operation with a domestic communications satellite system. Lat. 66°15'21", Long. 166°04'10". Rec. freq: 3700-4200 MHz. Trans. freq: 5925-6425 MHz. Emission 25.7F9. With a 4.5 meter antenna.

348-DSE-P/L-77 Home Entertainment Company, Seymour, Connecticut. For authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 41°21'43", Long. 73°06'48". Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 4.5 meter antenna.

349-DSE-ML-77 Wheeling Antenna Co., Inc. (WD26), Wheeling, West Virginia. Modification of license to make technical changes to utilize a 5 meter antenna instead of the original 10 meter antenna licensed.

[FR Doc.77-14030 Filed 5-16-77;8:45 am]

[Docket Nos. 21193, 21194; File Nos. BPH-9674, BPH-9847]

REX K. JENSEN AND KIDO BROADCASTERS, INC.

Applications for Construction Permit; Memorandum Opinion and Order

Adopted: May 6, 1977.

Released: May 11, 1977.

In re applications of Rex K. Jensen, Boise, Idaho, requests: 104.3 MHz, Channel 282, 30 kW (H & V); 2670 feet (H & V); KIDO Broadcasters, Inc., Boise, Idaho, requests: 104.3 MHz, Channel 282, 50 kW (H & V); 1790 feet (H & V).

1. The Commission, by the Chief, Broadcast Bureau, has before it for consideration the above-captioned mutually exclusive applications of Rex K. Jensen (Jensen), Boise, Idaho, and KIDO Broadcasters, Inc. (KIDO), Boise, Idaho, for a construction permit for a new FM broadcast station at Boise, Idaho.

2. Jensen has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971) in three respects. First, from the information before us, it appears that the applicant has failed to survey leaders from a significant group comprising a part of the Boise community. *Voice of Dixie, Inc.*, 45 FCC 2d 1027, 24 RR 2d 1127 (1974), recon. den., 47 FCC 2d 526, 30 RR 2d 851, (1974). Specifically, in his demographic study, Jensen states that Boise is the center of economic and commercial activity in the area, and that the city's manufacturing has expanded so substantially in recent years as to become one of the major industrial employers. However, Jensen has interviewed only several small businessmen, and one representative of a bottling company,

and therefore, our review of his application reveals no one who can be considered as representative of industrial employers within Boise. Second, Jensen has not identified the person who conducted the general public survey as an employee or prospective employee of his proposed station. (See question and answer 11(b) of the *Primer*.) Third, Jensen has not complied with question and answer 29 of the *Primer* which requires that the broadcast matter proposed to meet the needs of the community must be fully described and show which programs are responsive to which problems and needs. For these reasons, a limited ascertainment issue will be specified.

3. Because Jensen proposes independent programming while KIDO proposes to duplicate some of the programming of its commonly owned AM station, KIDO, evidence regarding program duplication will be admissible under the standard comparative issue. When duplicated programming is proposed, the showing permitted under the standard comparative issue will be limited to evidence concerning the benefits and detriments to be derived from the proposed duplication which would offset its inherent inefficiency. *Jones T. Sudbury*, 8 FCC 2d 360 (1967).

4. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purposes of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

5. Except as indicated above, the applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

6. Accordingly, *it is ordered*, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine with respect to the efforts of Rex K. Jensen to ascertain the community problems of Boise, Idaho, first, whether the applicant consulted with leaders of industry; second, whether the person who conducted the applicant's general public survey was an employee or prospective employee of the proposed station; and third, whether the applicant's proposed programming meets the problems and needs revealed in his community ascertainment.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. *It is further ordered*, That to avail themselves of the opportunity to be heard, the applicants herein, pursuant to Section 1.221(c) of the Commission's Rules, in person, or by attorney, shall, within twenty days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

8. *It is further ordered*, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, in Section 1.594 of the Commission's Rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 1.594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.77-14031 Filed 5-16-77;8:45 am]

[Docket No. 21179]

UHF CHANNEL READOUT ON TELEVISION RECEIVERS

Order

Adopted: May 6, 1977.

Released: May 11, 1977.

1. Springfield Television Broadcasting Company; National Business Network, Inc.; Delta Television Corporation; and Oklahoma City Broadcast Company have requested that the time for filing comments in this proceeding be extended to July 1, 1977 and that the time for filing reply comments be extended to July 22, 1977.

2. In support of their request, petitioners state that the additional time is needed to develop the information sought by the Commission in this proceeding. We wish to develop as much information as possible to help us resolve questions addressed in the Notice of Inquiry and are therefore granting the request.

3. Accordingly, *it is ordered*, Pursuant to Section 0.251(b) of the Rules and Regulations, 47 CFR 0.251(b), That the time for filing comments in this proceeding is extended to July 1, 1977, and that the time for filing reply comments is extended to July 22, 1977.

LAWRENCE W. SECREST III,
Deputy General Counsel.

[FR Doc.77-14034 Filed 5-16-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS

Week of April 29 Through May 6, 1977

Notice is hereby given that during the week of April 29 through May 6, 1977, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the FEA action sought in such cases may file with the FEA written comments on the applications within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

ERIC J. FYGI,
Acting General Counsel.

MAY 12, 1977.

APPENDIX.—*List of cases received by the Office of Exceptions and Appeals, week of Apr. 29 through May 6, 1977*

Date	Name and location of applicant	Case No.	Type of submission
Apr. 29, 1977	Guam Oil & Refining Co., Inc., Dallas, Tex. (If granted: Guam Oil & Refining Co., Inc., would receive a stay of the requirements of 10 CFR 211.67(a) pending a final determination of its application for exception.)	FES-4105	Stay of 10 CFR 211.67(a)
Do	Keener Oil Co., Tulsa, Okla. (If granted: Keener Oil Co.'s Seminole County, Okla., leases from which production was sold to OKC Corp., would be recertified.)	FEE-4110	Price exception (sec. 212.73).
Do	UCO Oil Co., Whittier, Calif. (If granted: UCO Oil Co. would receive an extension of the relief granted in the FEA's Feb. 17, 1977, decision and order and would be assigned new, lower priced suppliers of motor gasoline.)	FXE-4111	Extension of the relief granted in UCO Oil Co., 5 FEA par. 83,065 (Feb. 17, 1977).
May 2, 1977	Commonwealth Oil Refining Co., Inc., Washington, D.C. (If granted: The FEA's Apr. 14, 1977, decision and order would be rescinded and the Commonwealth Oil Refining Co. would receive retroactive and prospective relief from its old oil entitlements program purchase obligations.)	FXA-1279	Appeal of the FEA's decision and order in Commonwealth Oil Refining Co., 5 FEA par. ..... (Apr. 14, 1977).
Do	Montara Petroleum Co., Palo Alto, Calif. (If granted: Crude oil produced from Montara Petroleum Co.'s DT-32x well in the Cat Canyon Oil field in Santa Barbara County, Calif., would be sold at upper tier ceiling prices on a retroactive basis.)	FEE-4113	Price exception (sec. 212.73).
Do	Stovall Oil Co., Casper, Wyo. (If granted: Crude oil produced from the Caballo unit in the Dead Horse Creek field in Campbell County, Wyo., would be sold at upper tier ceiling prices.)	FEE-4112	Do.
Do	TOSCO Corp., Washington, D.C. (If granted: The FEA's Mar. 31, 1977, decision and order would be rescinded, TOSCO Corp. would not be required to refund overcharges resulting from the incorrect calculation of its May 15, 1973, selling prices, and the firm would be permitted to continue to utilize those prices in determining its maximum allowable selling prices.)	FXA-1280	Appeal of FEA's decision and order in TOSCO Corp., 5 FEA par. ..... (Mar. 31, 1977).

Date	Name and location of applicant	Case No.	Type of submission
May 3, 1977	Atlantic Richfield Co., Los Angeles, Calif. (If granted: The FEA's Jan. 13, 1977, decision and order, would be rescinded and Atlantic Richfield would not be required to comply with the requirements of the remedial order issued by region IX on Sept. 2, 1976.)	FMR-0104	Modification of FEA's decision and order in Atlantic Richfield Co., 5 FEA par. 80,521 (Jan. 13, 1977).
Do	Brooks Exploration Inc., Denver, Colo. (If granted: Crude oil produced from the Kittelson No. 1 well in Divide County, N. Dak., would be sold at upper tier ceiling prices for the benefit of the working interest owners.)	FEE-4114	Price exception (sec. 212.-73).
Do	B. J. Hickman, Kimball, Nebr. (If granted: Mr. B. J. Hickman would be permitted to determine the price of the crude oil which he produced and sold from the J. R. Cross property without regard to a current cumulative deficiency and would not be required to refund alleged over-charges in his sales of crude oil to Koch Oil Co.)	FEE-4119	Price exception (sec. 212.73)
Do	Johns-Manville, Denver, Colo. (If granted: The FEA's information request denial would be rescinded and Johns-Manville would receive a copy of the summary evaluation of the feasibility of total conversion of coal firing for the Waukegan BM plant of Johns-Manville Corp.	FFA-1283	Appeal of FEA's information request denial.
Do	Louis Kahan, Tulsa, Okla. (If granted: Louis Kahan would receive a stay of the requirements of the remedial order issued by FEA region VI on Apr. 11, 1977, pending a final determination on an appeal which the firm states it will file.)	FRS-1281	Stay of the remedial order issued by region VI on Apr. 11, 1977.
Do	Laketon Asphalt Refining, Inc., Evansville, Ind. (If granted: The FEA would review the entitlements exception relief granted to Laketon Asphalt Refining, Inc., during its 1976 fiscal year in order to determine whether the level of exception relief approved was appropriate.)	FEX-0156	Review of entitlements exception relief.
Do	Sun Co., Inc., Philadelphia, Pa. (If granted: The FEA's Feb. 25, 1977, decision and order issued to Amtel, Inc., would be rescinded and Sun Co., Inc., would not be required to reduce its sales price for motor gasoline which it supplies to Amtel, Inc.)	FXA-1282	Appeal of FEA's decision and order in Amtel, Inc., 5 FEA par. 83,091 (Feb. 25, 1977).
Do	UCO Oil Co. (UCO Terminals, Inc.), Whittier, Calif. (If granted: UCO Terminals, Inc., a subsidiary of the UCO Oil Co., would be permitted to import into district V, 1,227,500 bbls. of unfinished product gasoline on a fee-free basis during the allocation period May 1, 1977, through Apr. 30, 1978.)	FPI-0116	Exception to sec. 213.33.
Do	Vickers Energy Corp. (TransOcean Oil, Inc.). (If granted: TransOcean Oil, Inc., a subsidiary of Vickers Energy Corp., would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at its Calumet, Mayfield, Patterson, and Putnam Oswego plants.)	FEE-4115—FEE-4118	Price exception (sec. 212.-103).
May 4, 1977	Franklin Oil Co., Old Saybrook, Conn. (If granted: Franklin Oil Co. would be assigned a new, lower priced supplier of motor gasoline to replace its base period supplier, the A-1 Oil Co.)	FEE-4121	Exception to change suppliers (sec. 211.9).
Do	Peters Fuel Corp., Oakland, Md. (If granted: The FEA's Mar. 30, 1977, decision and order would be rescinded and Peters Fuel Corp. would be permitted to increase its prices for fuel oil above the maximum level permited under 10 CFR 212.93.)	FXA-1285	Appeal of FEA's decision and order in Peters Fuel Corp., 5 FEA par. ___ (Mar. 30, 1977).
Do	San Joaquin Refining Co., Newport Beach, Calif. (If granted: The FEA's Feb. 1977, entitlement notice issued Apr. 26, 1977, would be revised and San Joaquin Refining Co. would be permitted to sell 39,797 entitlements.)	FEA-1284	Appeal of FEA's February 1977, entitlement notice issued, Apr. 26, 1977.
Do	Texas Pacific Oil Co., Inc., Dallas, Tex. (If granted: Crude oil produced from the W. J. Decker lease within the 1st Wilcox sand unit B, East Baton Rouge Parish, La., would be sold at upper tier ceiling prices without regard to the property's cumulative crude oil production deficiency.)	FEE-4120	Price exception (sec. 212.-72).
May 5, 1977	Elliot's Flying Service, Des Moines, Iowa. (If granted: Elliot's Flying Service would be permitted to increase prices for 80 Octane Av Gas, 100 Octane Av Gas, and K-40 jet fuel above the maximum levels specified in 10 CFR 212.93.)	FEE-4123	Price exception (sec. 212.-93.)
Do	Friendly Neighbors Gas Corp., Henryetta, Okla. (If granted: The Friendly Neighbors Gas Corp. would not be classified as a gas distributor and would not be required to remit a yearly pipeline division fee.)	FEE-4125	Exception.
Do	Gas Del Oro, Inc.; Gas Del Oro International, Inc.; and El Dorado Marketing Co. of Laredo, Houston, Tex. (If granted: The office of private grievances and redress would direct other FEA personnel to take action on the request for an interpretation submitted by Gas Del Oro, Inc.; Gas Del Oro International, Inc.; and the El Dorado Marketing Co.)	FSG-0043	Request for special redress.
Do	Hall, Estill, Hardwick, Gable, Collingsworth & Nelson, P.C. Washington, D.C. (If granted: The FEA information access office would be directed to respond to a request submitted by John M. Coffey for documents relating to the requirement that firms compute inventory costs on a companywide basis.)	FFA-1286	Appeal of FEA's information request denial.
Do	Southland Oil Co., Jackson, Miss. (If granted: Southland Oil Co. would receive an extension of the exception relief granted in the FEA's Dec. 15, 1976, decision and order and would not be required to purchase entitlements under the old oil entitlements program.)	FXE-4124	Extension of the relief granted in Southland Oil Co., 4 FEA par. 83,258 (Dec. 15, 1976).
Do	Victoria Equipment & Supply Co. (If granted: Crude oil produced from Keeran Ranch-D lease in Victoria County, Tex., would be sold at upper tier ceiling prices on a retroactive basis.)	FEE-4122	Price exception (sec. 212.73).

[FR Doc.77-14080 Filed 5-13-77;8:57 am]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Availability of Final Revised Programmatic Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C) and 10 C.F.R., parts 208, 303, and 305, the Federal Energy Administration (FEA) has prepared a final revised programmatic environmental impact statement (EIS) to reflect the amendment of section 2 of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), 15 U.S.C. 791 et seq., effected by the Energy Policy and Conservation Act, Pub. L. 94-163.

Under ESECA, as amended, the FEA is authorized to prohibit certain powerplants and major fuel burning installations from burning natural gas or petroleum products as their primary energy source and to require certain powerplants and major fuel burning installations in the early planning process to be designed and constructed to be capable of using coal as their primary energy source. The FEA implements this authority by issuing prohibition orders and construction orders, respectively. The final revised ESECA programmatic EIS includes public comments received on the draft revised ESECA programmatic EIS and FEA analyses and responses to those comments.

Single copies of the final revised programmatic EIS may be obtained from FEA's National Energy Information Center, Room 1404, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Copies of the final revised programmatic EIS will also be available for public inspection in the FEA Freedom of Information Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Interested persons are invited to submit comments with regard to the final revised ESECA programmatic EIS to Executive Communications, Box MQ, Room 3309, Federal Energy Administration, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on comments submitted to FEA with the designation, "Final Revised ESECA Programmatic EIS." Fifteen copies should be submitted. All comments should be received by June 17, 1977, in order to receive full consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Inquiries concerning the final revised programmatic EIS should be directed to Gerald J. Parker or Beverley Crispin,

Office of Coal Utilization, Federal Energy Administration, Room 6149, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461. 202–566–9580).

Issued in Washington, D.C. on May 12, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77–14079 Filed 5–13–77;8:57 am]

MID-CONTINENT PETROLEUM PIPELINE SYSTEMS

Public Hearing and Request for Data on Projected Throughputs for and Capacity

AGENCY: Federal Energy Administration.

ACTION: Notice.

SUMMARY: The Federal Energy Administration (FEA) hereby gives notice that it will hold a public hearing and receive written comments from pipeline companies and refiners and other firms participating in the Canadian Allocation Program (CAP) to enable it to determine the projected throughputs for and capacity of the petroleum pielines in the mid-continent serving Illinois and the Northern Tier states. The data received in this proceeding will enable the agency to assess more accurately the extent to which the mid-continent pipeline system can support additional volumes of domestic crude oil to be moved to Canada and exchanged for Canadian crude oil to supplement refiners' supplies in face of the declining export levels for Canadian crude oil.

DATES: Comments by May 27, 1977; requests to speak by May 24, 1977; statements by May 26, 1977; hearing to be held on May 27, 1977, at 9:30 a.m.

ADDRESSES: Written data and request to speak at the hearing to: Executive Communications, Room 3309, Federal Energy Administration, Box MP, Washington, D.C. 20461; statements to Regulations Management, Federal Energy Administration, Room 2214, 2000 M Street NW., Washington, D.C. 20461.

HEARING HELD AT:

Federal Energy Administration, Room 2105, 200 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Deanne Williams (FEA Reading Room), 12th and Pennsylvania Avenue NW., Room 2107, Washington, D.C. (202) 566–9161.

Mario Cardullo (Program Office), 2000 M Street NW., Room 6128, Washington, D.C. 20461 (202) 254–8464.

Michael Paige or Samuel M. Bradley, (Office of General Counsel), 12th and Pennsylvania Avenue NW., Room 5134, Washington, D.C. 20461 (202) 566–9565.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In January 1976 FEA adopted the Mandatory Canadian Crude Oil Allocation Regulations set forth in 10 CFR Part 214 in response to the Canadian National Energy Board's (NEB) decision in 1974 to gradually phase out exports of crude oil to the United States in the early 1980's. The regulations, which are intended to give the refiners that are most dependent on Canadian crude oil additional time to arrange for alternative crude oil delivery systems, provide for the allocation on a preferential basis of crude oil and plant condensate imported from Canada to priority classes of refiners and other firms.

Since 1974, the NEB has accelerated the decline in the export levels of Canadian crude oil, particularly the light crude oils, and many refiners are experiencing increasing difficulty in replacing their Canadian feedstocks. In light of the diminishing supply of Canadian crude oil, crude oil exchanges between United States and Canadian refiners appear to have become an inceasingly important short-term supply supplement for refiners participating in the CAP. Canadian crude oil involved in such exchanges is considered to be outside the Canadian exportable surplus and therefore not subject to FEA's Mandatory Canadian Crude Oil Allocation Regulations.

The potential for crude oil exchanges between United States and Canadian refiners is limited by several factors, including (1) limited pipeline capacity from the Gulf of Mexico through Chicago to support exchanges of domestic for Canadian crude oil; (2) the NEB's policy that the Sarina/Montreal pipeline be maintained at full capacity; and (3) the NEB's requirement that, as one of the conditions precedent to NEB approval of exchanges of forign for Canadian crude oil via the Portland, Maine to Montreal pipeline, FEA confirm that the mid-continent pipeline system is at capacity. With regard to the third factor, at present FEA is greatly limited in its ability to furnish the NEB with meaningful data regarding the capacity of the mid-continent pipeline system because there is no requirement to report such data applicable to the firms which own the pipelines or the refiners which use the system. Although FEA has been able to obtain monthly utilization data from some pipeline companies, the agency does not have sufficient information essential to the development of a comprehensive policy for United States and foreign crude oil exchanges with Canadian refiners, such as monthly, quarterly and annual forecasts of required throughput to the various locations served by each pipeline, maximum pipeline capacity to each location, problems encountered by refiners in obtaining adequate throughput space, and expansion plans of each pipeline company.

In light of the increasing demand among refiners for crude oil exchanges with Canadian refiners in response to the declining export levels for Canadian crude oil, FEA has concluded that it should solicit at this time the pipeline information set forth below to improve FEA's ability to determine more adequately whether exchanges of United States for Canadian crude oil utilizing the mid-continent pipeline system should be limited in volume and duration due to a lack of spare pipeline capacity and, in addition, whether there is a resulting need for exchanges between United States and Canadian refiners involving solely foreign source crude oil.

FEA believes that it has ample existing statutory authority to institute a mandatory reporting requirements for pipeline companies and refiners with respect to the pipeline capacity and throughput information solicited in this notice. In the event that the information received in response to this notice is inadequate, FEA will consider the imposition of a mandatory reporting requirement to elicit the required data. In this regard, FEA specifically requests comments as to the extent to which this information is already available to the U.S. Government; the frequency of reports; what sort of analysis, if any, should accompany reports; the most appropriate reporting mechanism to be utilized; the costs and burdens of such a reporting requirement; and the extent to which pipeline throughput and capacity data should be accorded treatment as proprietary.

DATA REQUESTED FROM PIPELINE COMPANIES

The following information is requested from firms that own and/or operate crude oil and petroleum product pipelines in the mid-continent that provide direct or interconnecting service to Illinois and the Northern Tier states, i.e., Michigan, Wisconsin, Minnesota, North Dakota, Montana and Washington. Information furnished to FEA should not necessarily be limited to the items enumerated below but may be expanded to include any other factors affecting the pipelines' systems capabilities to transport crude oil and petroluem products into the Northern Tier states.

(1) Name of the pipeline, point of origin and locations served.

(2) The rated capacity of the pipeline by segment by calendar quarter for 1976 and the first half of 1977, and the projected rated capacity by calendar quarter for the second half of 1977, 1978, 1979, and 1980. The basis for the capacity figures, i.e., viscosity, service factors, etc., should be identified.

(3) The actual throughput by calendar quarter for 1976 and the first half of 1977, and the projected throughput by calendar quarter for the second half of 1977, 1978, 1979, and 1980. FEA recognizes that projections of throughput are generally used for planning purposes only and that they may vary from actual throughput and requests that the meth-

odology used in developing projections of throughput be set forth.

(4) The crude oil and petroleum product capabilities of the pipeline, including quality of product and crude limitations, segregation requirements, tender sizes, terminal storage requirements and breakout tankage limitations.

(5) Any existing or projected operating constraints, i.e., dock, terminal or pumping limitations, environmental restrictions, etc., and any existing or future capabilities to increase throughput volumes.

(6) Interconnections with other pipelines and transfer capacities.

(7) Proration policy and procedures.

(8) Nomination procedures and time table.

(9) Planned expansions and modifications through 1980.

DATA REQUESTED FROM REFINERS SUBJECT TO CANADIAN ALLOCATION PROGRAM

The following information is requested from the refiners and other firms participating in the CAP that utilize the pipelines in the mid-continent system.

(1) Any operating factors that have limited or will limit utilization of pipelines in the mid-continent system.

(2) Any problems encountered in obtaining adequate throughput space in the mid-continent pipeline system.

In addition to the foregoing specific items, FEA also invites comments from both pipeline companies and refiners participating in the CAP as to an appropriate data collection procedure that will enable FEA to advise the NEB when the mid-continent pipeline system is operating at capacity and thus cannot support additional exchanges of domestic for Canadian crude oil.

CONFIDENTIAL INFORMATION

In accordance with the procedures stated in 10 CFR 205.9(f), any person or firm which believes that any information provided to FEA in its response is a trade secret or commercial or financial information that is privileged or confidental and that disclosure of this information may cause significant competitive damage to it must inform FEA of this conclusion. Specifically, the person or firm must (1) file, together with the response, a second copy of the response on which has been clearly indicated the information the release of which the person or firm believes would cause significant competitive damage and (2) indicate on the original response that it contains confidential information. The person or firm should file a statement which explains, item by item, the exact nature of the significant competitive damage which would result from the release of each item, and whether that item is customarily treated as confidential by the firm and the industry. FEA retains the right to make its own determination regarding any claim of confidentiality. Notice of the decision by FEA to deny such claim in whole or in part, and an opportunity to respond, shall be given to a person or firm claiming confidentiality of information no less than five days prior to its public disclosure.

PROCEDURES FOR PUBLIC HEARINGS AND SUBMISSION OF WRITTEN COMMENTS

A. *Written Comment Procedures.* Interested persons are invited to participate in this proceeding by submitting data, views, or arguments with respect to the specific items for comment set forth in this notice to Executive Communications, Federal Energy Administration. Comments should be identified on the outside of the envelope and on documents submitted to FEA with the designation, "Mid-continent Pipeline System", Box MP. Fifteen copies should be submitted. All written comments should be submitted by 4:30 p.m. on May 27, 1977. All comments received by FEA will be available for public inspection in the FEA Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue, N.W. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

B. *Public Hearings*—1. *Request procedure.* A public hearing to receive oral presentation of data, views and arguments from interested persons will be held at the time and place indicated earlier in this notice.

Any person who has an interest in the subject matter of this notice, or who is a representative of a group or class of persons which has such an interest, may make a written request for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, and must be received before 4:30 p.m., May 24, 1977. Such a request may be hand-delivered to Room 3309, Federal Building, 12th and Pennsylvania Avenue N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. A request should be labeled both on the document and on the envelope "Mid-continent Pipeline System."

The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he or she is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he or she may be reached through May 26, 1977.

Each person selected to be heard will be notified by FEA before 4:30 p.m., May 25, 1977, and must submit 15 copies of his or her statement to the address and by the date given earlier in this notice.

2. *Conduct of hearings.* FEA reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. Each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearing to Executive Communications, FEA, before 4:30 p.m., on the day prior to the hearing. Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question in writing to the presiding officer. FEA, or the presiding officer if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by FEA and made available for inspection in the FEA Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Issued in Washington, D.C., May 13, 1977.

ERIC J. FYGI,
Acting General Counsel.

[FR Doc.77-14130 Filed 5-13-77;11:52 am]

FEDERAL MARITIME COMMISSION

CAPITALIZATION OF THE COST OF FUNDS USED DURING VESSEL CONSTRUCTION

Request for Comments and Information

The issue of capitalizing the cost of funds employed during a period of construction has become a matter of interest to both the maritime industry and the Commission. This cost of funds concept includes two elements: (a) actual interest paid on funds borrowed to finance construction, and (b) the cost of other funds, if any, used for construction—representing the cost of equity funds.

Concern over the question of capitalizing actual interest expense during construction is not unique to the maritime industry. The accounting profession, through the Financial Accounting Standards Board, has the matter under active consideration. The Securities and Exchange Commission (SEC) has recently imposed a moratorium on changing to the capitalization method, with exceptions for utility companies, savings and loan associations, and retail land companies, which have all traditionally followed this practice.

The question of capitalization of the cost of using equity funds for construction is another matter. Although permitted by certain regulatory agencies, it does not have the broad support of interest expense capitalization.

Matson Navigation Company, (Matson) a common carrier by water in the domestic offshore trades, has petitioned the Commission to institute a rule-making proceeding which would result in the promulgation of the following rule:

Carriers using the uniform system of accounts prescribed by the Maritime Administration shall include in the original cost of a vessel acquired by the carrier from the builder: (a) actual interest expense paid on funds borrowed to finance the cost of construction of a new vessel or of conversion or alteration of an existing vessel prior to the time the new, converted or altered vessel is placed in service; and (b) the cost of other funds when so used, calculated at a rate representing the cost of the carrier of equity funds.

We do not have sufficient information on the capitalization of the cost of funds used in construction to determine whether the rule proposed by Matson is adequate or whether another rule would be more suitable. Before considering issuance of a Notice of Proposed Rulemaking regarding the capitalization of the cost of construction funds, we wish to solicit comments on the entire question of the capitalization of the cost of construction funds so that the Commission may be better informed as to the scope and impact of any proposed rule. In addition to comments on Matson's proposed rule, we are particularly interested in obtaining comments on the following questions:

(1) Should investment income be applied to reduce interest expense incurred during construction;

(2) Should capitalization of interest expense be limited to vessels, or include other assets;

(3) What method of computing the rate of interest should be used, such as:

(a) prime rate on paper of various maturities;

(b) current rate of long-term debt;

(c) rate to be earned on short-term investment;

(d) historic cost of obtaining construction funds, and

(e) interest on federally insured loans;

(4) What is the impact of cost of funds capitalization on Capital Construction Fund utilization;

(5) When is a period of construction terminated—e.g., date of delivery, date of completion, date asset is introduced into service, etc., and

(6) What is an appropriate method of determining the rate of return on investment when one carrier capitalizes the cost of funds and the other does not?

Interested persons should submit their comments to the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573 on or before June 17, 1977.

In light of the foregoing the petition for rulemaking is denied.

By the Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-14075 Filed 5-16-77;8:45 am]

HAWAII AND MATSON

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Streeet, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement as indicated hereinafter) and the statement should indicate that this has been done.

STATE OF HAWAII
MATSON TERMINALS, INC.

and

CALIFORNIA AND HAWAIIAN SUGAR COMPANY

Notice of Agreement Filed by: E. Alvey Wright, Director, State of Hawaii, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813.

Agreement No. T-2171-6, among the State of Hawaii (Hawaii), Matson Terminals, Inc., (Matson) and California and Hawaiian Sugar Company (C & H), modifies the basic agreement between Hawaii and Matson which provides for the lease of marine terminal space by Hawaii to Matson for use primarily as a container facility. The purpose of the modification is to provide for C & H's construction and installation of improvements on Parcel I for the purpose of receiving, storing and handling of bulk liquid molasses produced on the island of Oahu. Hawaii agrees to the intended construction and installation of the improvements and Matson's operation and maintenance of the improvements on behalf of C & H. C & H shall have title to the improvements, however, in the event that the lease is terminated, Hawaii shall have the option to acquire title to the improvements by paying C & H the then fair market value of such improvements.

Dated: May 12, 1977.

By Order of the Federal Maritime Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-14074 Filed 5-16-77;8:45 am]

[Docket No. RI77-60]

FEDERAL POWER COMMISSION

ALFRED D. McKELVY

Petition for Special Relief

MAY 10, 1977.

Take notice that on April 15, 1977, Alfred D. McKelvy (Petitioner), c/o Richard Jones, 700 Farm Credit Banks Building, Wichita, Kansas 67202, filed in Docket No. RI77-60 a petition for special relief pursuant to Order Nos. 481 and 551 and § 2.76 of the Commission's General Policy and Interpretations (18 CFR 2.76). Petitioner seeks to collect a rate of 30 cents per Mcf after Btu adjustment for the sale of natural gas to Northern Natural Gas Company from the Boyd No. 1 Gas Unit Well, Finney County, Kansas. Petitioner states that due to declining production and age and formation conditions, it was necessary to rework, tube and equip the well for the purpose of disposing of excessive amounts of salt water. Petitioner further states that as a result of reworking and reconditioning the well, it is anticipated that abandonment of the well will be postponed for a period of several years and that additional gas production will be secured.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 31, 1977 file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing there-

in, must file a petition to intervene in accordance with the Commission's Rules.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13982 Filed 5-16-77;8:45 am]

[Docket No. CS75-380, et al.]

BOBCAT OIL COMPANY, ET AL.

Notice of Applications for "Small Producer" Certificates[1]

MAY 10, 1977.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 6, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS75-380[1]	Apr. 25,1977	Bobcat Oil Co., 3120 Security Life Bldg., 1616 Glenarm Pl., Denver, Colo. 80202.
CS77-92	Apr. 28,1977	William C. Southmayd, 1903 East 38th St., Tulsa, Okla. 74105.
CS77-501	Apr. 27,1977	Mrs. Ethelyn Shadid, 445 15th St., Santa Monica, Calif. 90402.
CS77-502	Apr. 28,1977	Henry L. Hillman, 2300 1st City National Bank Bldg., Houston, Tex. 77002.
CS77-504	.....do.....	William J. McCormick, 2905 San Pablo Northeast, Albuquerque, N. Mex. 87110.
CS77-505	.....do.....	D. L. Hannifin Family Trust, P.O. Box 152, Roswell, N. Mex. 88201.
CS77-506	.....do.....	Myron Anderson, 250 Mid America Bldg., Midland, Tex. 79701.
CS77-507	.....do.....	Charles W. Perry, Jr., P.O. Box 371, Midland, Tex. 79701.
CS77-508	.....do.....	Fred G. Goodman, P.O. Box 4332, Midland, Tex. 79701.
CS77-509	.....do.....	The 1st National Bank & Trust Co. of Tulsa Executor of the Wm. H. Meissner Estate, P.O. Box 1227, Tulsa, Okla. 74103.
CS77-510	Apr. 29,1977	James H. Dill, P.O. Box 339, Belle Chasse, La. 70037.
CS77-511	.....do.....	B. H. Hastings, 307 M St., Salt Lake City, Utah 84103.
CS77-512	.....do.....	R. S. Petroleum, P.O. Bin 2427, Bakersfield, Calif. 93303.
CS77-513	.....do.....	Burlington Industries, Inc., P.O. Box 21207, Greensboro, N.C. 27420.
CS77-514	May 2,1977	E. B. Yale, P.O. Box 1, Tyler, Tex. 75701.
CS77-515	Apr. 27,1977	Justin H. Arata, 221 West Ludwig Rd., Fort Wayne, Ind. 46825.

[1] Bobcat Oil Co. has sold all of its producing oil and gas properties, and is not in the process of a formal corporation dissolution.

[FR Doc.77-13980 Filed 5-16-77;8:45 am]

[Docket No. RP72-142 (PGA77-5)]

CITIES SERVICE GAS CO.

Proposed Changes in FPC Gas Tariff

MAY 5, 1977.

Take notice that Cities Service Gas Company (Cities Service) on April 6, 1977, tendered for filing proposed changes in its FPC Gas Tariff, Second Revised Volume No. 1. Cities Service states that it has filed its Nineteenth Revised Sheet PGA-1 to be effective May 23, 1977, to track tariff changes made by two of its pipeline suppliers, Transwestern Pipeline Company (Transwestern), and Arkansas Louisiana Gas Company (Arkla).

Transwestern has filed its Sixth Revised Sheet Nos. 5 and 6 to its FPC Gas Tariff, Second Revised Volume No. 1, to track increased purchased gas costs and a decreased surcharge adjustment to clear the balance in its Gas Cost Adjustment Account. Such rates will become effective April 1, 1977, pursuant to the order issued March 31, 1977.

Arkla filed its Ninth Revised Sheet No. 185 to its FPC Gas Tariff, Original Volume No. 3, to track increases in its cost of gas due to pipeline supplier rate changes. Such rates became effective January 15, 1977, pursuant to FPC order issued January 18, 1977.

Cities Service states that copies of its filing were served on all jurisdictional customers, interested state commissions and all parties to the proceeding in Docket Nos. RP72-142 and RP76-135.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 19, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13967 Filed 5-16-77;8:45 am]

[Docket No. CP77-354]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Application

MAY 6, 1977.

Take notice that on April 22, 1977, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP77-354 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 170 Mcf of natural gas per day for Peoples Natural Gas Company (Peoples), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 170 Mcf of natural gas per day for a 2-year period for Peoples, which volumes would be received by Applicant into its Line 7917 in Menallen Township, Fayette County, Pennsylvania, from Peoples. Applicant states that it would redeliver the subject gas to Columbia Gas of Pennsylvania, Inc. (Columbia Pa.), a wholesale customer of Applicant, at an existing point of delivery located at the outlet side of the McClellandtown Compressor Station, German Township, Fayette County, Pennsylvania. Applicant states that the gas so delivered to Columbia Pa. would balance, in part, continuing intrastate exchange of natural gas between Columbia Pa., and Peoples made pursuant to authority of the Pennsylvania Public Utilities Commission at other locations all within the State of Pennsylvania.

It is stated that the gas to be transported is produced by Peoples from a small production field northwest of Uniontown in Fayette County, Pennsylvania. The production from this field has been declining over the years and the decrease in volume has made the continued operation of Peoples' Union Pump Station economically infeasible, it is said. Applicant asserts that the transportation of this gas would allow Peoples to shut down its Union Pump Station which is obsolete and uneconomical to operate; and provide a means for Peoples to utilize the remaining gas production.

Pursuant to a gas transportation agreement dated March 29, 1977, between Peoples and Applicant, Peoples has contracted to pay Applicant a transportation charge reflecting Applicant's average system-wide unit transmission and gathering costs, exclusive of company-use and unaccounted-for gas, which is 17.24 cents per Mcf. Applicant states it would retain for company-use and unaccounted-for gas a percentage of the total volume received for the account of Peoples, which percentage is currently 3.1 percent.

Applicant further states that it would transport the proposed volumes of gas subject to the limits of its pipeline capacity and to its service obligations to its CD, WS, SGES, G and SGS customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 27, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13985 Filed 5-16-77;8:45 am]

[Docket No. ES77-35]

COMMUNITY PUBLIC SERVICE CO.

Notice of Application

MAY 10, 1977.

Take notice that on April 29, 1977, the Community Public Service Company (Applicant) filed an application pursuant to section 204 of the Federal Power Act with the Federal Power Commission seeking authorization to borrow from certain banks and to issue (prior to March 31, 1979) short-term unsecured promissory notes or commercial paper to evidence such borrowing in the maximum principal amount of $15,000,000.

Applicant was incorporated in the State of Texas on April 18, 1963, and is domesticated in the States of New Mexico and Arizona. Applicant is the surviving corporation following a merger with Community Public Service Company, a Delaware corporation.

According to Applicant, the purpose of the proposed short-term bank loans and commercial paper will be the reimbursement of the Applicant's treasury for expenditures for the construction, completion, extension or improvement of facilities.

Any person desiring to be heard or to protest the said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 23, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13983 Filed 5-16-77;8:45 am]

[Docket No. RP77-18]

EL PASO NATURAL GAS CO.

Notice of Tender of Tariff Filing

MAY 10, 1977.

Take notice that on May 2, 1977, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Commission's Regulations Under the Natural Gas Act, certain revised and substitute tariff sheets to its FPC Gas Tariff,[1] providing proposed adjustments to its rates contained on the tariff sheets submitted in the notice of change in rates filed at Docket No. RP77-18 on November 30, 1976, and suspended until June 1, 1977, by order issued December 29, 1976, in this docket.

El Paso states that the rates set forth on the tendered tariff sheets differ from the rates which were suspended in Docket No. RP77-18 in that the suspended rates have been modified by: (i) The required changes resulting from the settlement agreement approved at Docket No. RP72-150, et al.; (ii) the restructured rates as provided by the settlement agreement dated March 21, 1977, pending approval at Docket No. RP76-59; and (iii) the authorized PGAC increases made effective on December 1, 1976, and April 2, 1977, respectively.

Tariff vol. No.	*Tariff sheet designation*
Original vol. No. 1	Substitute 20th revised sheet No. 3-B.
3d revised vol. No. 2	Substitute 10th revised sheet No. 1-D.
Original vol. No. 2 A	Substitute 12th revised sheet No. 1-C.
Original vol. No. 1	Substitute 5th revised sheet No. 63-C.5.
3d revised vol. No. 2	Substitute 5th revised sheet No. 1-M.5.
Original vol. No. 2 A	Substitute 5th revised sheet No. 7-MM.5.
Original vol. No. 1	5th revised sheet No. 27-B.
Original vol. No. 1	6th revised sheet No. 27-C.
Original vol. No. 1	3d revised sheet No. 27-D.

The filing states that El Paso has concurrently filed its motion to place into effect on June 1, 1977, the end of the suspension period in Docket No. RP77-18, the increased rates in Docket No. RP77-18, as contained in the instant tendered, as well as El Paso's related agreement and undertaking respecting El Paso's refund obligations.

El Paso has requested further that the Commission grant waiver of its Regulations Under the Natural Gas Act as may be necessary in order to implement the instant filing on June 1, 1977. El Paso states that copies of the filing and attachments thereto, have been served upon all parties of record in Docket No. RP77-18 and, otherwise, upon all affected customers and interested state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before May 24, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a peti-

[1] Gas tariff:

tion to intervene or protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations Under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13979 Filed 5-16-77;8:45 am]

[Docket No. E-9590]

GEORGIA POWER CO.

Filing of Application to Sell Facilities

MAY 10, 1977.

Take notice that on April 19, 1977 Georgia Power Company (Company) tendered for filing an application for an order authorizing (on or before June 1, 1977) the sale of approximately 68 miles of 115 kv transmission lines, 53 miles of 230 kv transmission lines, and nine substations to the City of Dalton, Georgia ("Dalton"). In addition, the Company filed a document on April 19, 1977 entitled "Motion for Waiver of Filing Requirement". In its motion, the Company requested a waiver of the requirement to file Exhibit D (as required by Section 33 of the Commission's Regulations), subject to the right of the Commission's Staff to request the Company to produce such parts of Exhibit D as are, in the opinion of Staff, necessary for its review of the application. According to the Company, the Company has never filed with the Commission a copy of its First Mortgage Indenture dated March 1, 1941, or supplements thereto. The Company states that the Indenture is 223 pages in length and there have been 42 supplements. The Company further states that assembling and copying these documents would require substantial amounts of time and expense. Finally, in its motion for waiver of requirements, the Company states that Dalton desires to purchase the transmission facilities on or before June 1, 1977.

On April 27, 1977, the Company submitted a letter addressed to the Secretary requesting that the Secretary not publish the notice submitted with the April 19th application. Also in that letter, the Company stated that it would provide the Secretary with an updated notice and a revised application.

On May 2, 1977, the Company tendered for filing a document entitled "First Amendment to Application of Georgia Power Company for Authorization to Sell Facilities." In that filed document the Company states that it seeks authority to sell to Dalton approximately 109 miles of 115 kv transmission lines, 48 miles of 230 kv transmission lines, and nine substations to Dalton. The Company also states that the parties have entered into an Integrated Transmission System Agreement (the "Transmission Agreement") providing for the establishment of an integrated transmission system to be operated by the Company and Dalton which will carry both of their loads free of charge (subject to the conditions of the Transmission Agreement). The Company also states that the Transmission Agreement requires an aggregate investment by each party in the transmission facilities which comprise the integrated transmission system in the proportion of the load in which each party (as defined in the Transmission Agreement) bears to the aggregate load on such system. The Company further states that Dalton desires to purchase certain transmission facilities presently owned by the Company which, after such sale, shall become the Dalton Transmission Facilities under the provisions of the Transmission Agreement.

Any person desiring to be heard or to protest said application should file a Petition to Intervene or Protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this application are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13976 Filed 5-16-77;8:45 am]

[Docket No. RP77-61]

McCULLOCH INTERSTATE GAS CORP.

Proposed Changes in Rates and Charges

MAY 9, 1977.

Take notice that on April 29, 1977, McCulloch Interstate Gas Corporation (McCulloch) tendered for filing Eleventh Revised Sheet No. 32 and Second Revised Sheet No. 38 to its FPC Gas Tariff, Original Volume No. 1. The Proposed effective date of such revised tariff sheets is June 1, 1977. McCulloch proposes to increase its presently effective PL-1 rate to 132.66¢ per MMBtu (14.65 psia). The presently effective PL-1 rate is subject to final Commission action in Docket No. RP75-98 and McCulloch's pending PGA filing in Docket No. RP73-91. This proposed change in rate is made to recover increases in the cost of service on sales of gas in the Powder River Basin, Wyoming to Colorado Interstate Gas Company ("CIG"), due to diminishing gas reserves, and to insure a reasonable rate of return. McCulloch also proposes to decrease its presently effective X-1 rate to 7.67¢ per Mcf (14.65 psia). The presently effective X-1 rate is subject to final Commission action in Docket No. RP76-66. This proposed rate represents an annual increase in revenues of approximately $43,800 over that amount agreed to by stipulation between CIG and McCulloch in the aforementioned pending Docket No. RP76-66 proceeding. This proposed change in rate is made to recover the same increase in cost referred to hereinabove for PL-1 rates for the transporting of gas from the Spearhead Ranch Area, Wyoming through McCulloch facilities to CIG's Powder River Lateral, Section 34, Township 36 North Range 73 West, Converse County, Wyoming, and to insure a reasonable rate of return. McCulloch states further that this rate request will be applicable to sales of gas in Montana-Wyoming Area. According to McCulloch, its total net operating revenue for 1976 was $4,793,183.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, Washington, D.C. 20426, in accordance with § 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13974 Filed 5-16-77;8:45 am]

[Docket No. RP77-58]

MID LOUISIANA GAS CO.

Proposed Change in FPC Gas Tariff

MAY 9, 1977.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on April 29, 1977, tendered for filing as a part of First Revised Volume No. 1 of its FPC Gas Tariff, Twenty-Fifth Revised Sheet No. 3a, Original Sheet No. 12c, Original Sheet No. 12d and Third Revised Sheet No. 26b.

Mid Louisiana states that the purpose of the filing is to reflect an increase in rates to be effective June 15, 1977, to submit a new transportation rate schedule and to make a change in the method of computing future purchased gas adjustments to reduce future surcharges. The proposed changes would increase Rate Schedules G-1, SG-1 and I-1 from 81.13 cents per Mcf to 108.73 cents per Mcf based on operations for the calendar year 1976, as adjusted.

Mid Louisiana states that the principal reasons for the proposed increase are (1) the cost increases arising from the connection and transportation of new sources of supply, at higher costs, to replace declining volumes from existing sources, (2) increases in employee pay-

roll and benefit program expenses, and (3) other cost increases net of decreases arising during the past two years. Adjustments have also been made to reflect cost decreases associated with Mid Louisiana's sale of the Hester Storage Field to Transcontinental Gas Pipe Line Company (Transco) and the cost of future storage services to be provided by Transco. Mid Louisiana states that the net effect of these adjustments does not have a significant impact upon the Company's rates.

Copies of the filing have been served on interested customers and state commissions.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13971 Filed 5-16-77;8:45 am]

[Docket No. RP76-4]

NATIONAL FUEL GAS SUPPLY CORP.

Filing of Revisions to Settlement Agreement

MAY 9, 1977.

Take notice that on April 18, 1977, National Fuel Gas Supply Corporation (National Fuel) tendered for filing certain revisions to the proposed settlement agreement certified to the commission in the captioned proceeding on September 27, 1976. National Fuel states that the revisions, having resulted from further settlement discussions among the parties, reduce the settlement cost of service by $23,666.

Any person desiring to be heard or to protest said revisions to the proposed settlement agreement should file comments with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before May 23, 1977. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13981 Filed 5-16-77;8:45 am]

[Docket Nos. RP75-108 and RP76-106]

NATURAL GAS PIPELINE CO. OF AMERICA

Filing of Proposed Settlement Agreement

MAY 10, 1977.

Take notice that on April 28, 1977 Natural Gas Pipeline Company of America (Natural) tendered for filing a proposed settlement agreement in the captioned dockets. Natural states that the settlement agreement disposes of all issues in the two proceedings.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before May 23, 1977. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13978 Filed 5-16-77;8:45 am]

[Project Nos. 2498 and 2499]

NEKOOSA PAPERS INC.

Notice of Application for Approval of Transfer of Licenses

MAY 9, 1977.

Public notice is hereby given that an application was filed on March 11, 1977, under the Federal Power Act, 16 U.S.C. 791a–825r, by Nekoosa Papers Inc. (Correspondence to: Mr. Robert R. Johnson, Secretary, Nekoosa Papers Inc., 100 Wisconsin River Drive, Port Edwards, Wisconsin 54469; and Mr. John M. Forester, Ruder, Ware, Michler & Forester, S.C., P.O. Box 1244, Wausau, Wisconsin 54401) for Commission approval of the transfer of the minor licenses for the Hewittville Project, FPC No. 2498, and the Unionville Project, FPC No. 2499, to Potsdam Paper Corporation of Wilmington, Delaware. Projects Nos. 2498 and 2499 are located in St. Lawrence County, New York, on the Raquette River.

The Hewittville Project consists of: (1) a combination gravity and buttress dam 550 feet long and 19 feet high above bedrock, with flashboards which add two feet to the height of the dam when used; (2) six 18-foot-deep and 13-foot-wide masonry flumes which convey water to six waterwheels; and (3) a reinforced steel and concrete powerhouse containing generating facilities with a total installed capacity of 1,770 horsepower.

The Unionville Project consists of: (1) a concrete buttress dam 299 feet long and 18 feet high, with flashboards which add two feet to the height of the dam when used; (2) a masonry flume 18 feet wide and 80 feet long; and (3) a brick and reinforced concrete powerhouse containing generating facilities with a total installed capacity of 1,859 horsepower.

The projects are located adjacent to paper mills and the power generated at the projects is utilized in the mill operations.

Potsdam Paper Corporation has filed a certificate of incorporation, corporate by-laws, and a certificate of authority to do business in the State of New York as evidence of its compliance with all applicable State laws as required by Section 9(b) of the Federal Power Act, 16 U.S.C. 802(b). Following the conveyance of title to the project properties, the transferee would submit certified copies of all of the instruments of conveyance.

Applicant has requested the shortened procedure provided for under Section 1.32(b) of the Commission's Rules of Practice and Procedure, 18 CFR 1.32(b) (1976).

Any person desiring to be heard or to make any protest with reference to said application should, on or before June 1, 1977, file with the Federal Power Commission, 825 N. Capitol St., N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules, of practice and procedure, 18 CFR § 1.8 or § 1.10 (1976). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by sections 308 and 309 of the Federal Power Act, 16 U.S.C. 825g and 825h, and the Commission's rules of practice and procedure, specifically § 1.32(b), a hearing on this application may be held before the Commission without further notice if no issue of substance is raised by any request to be heard, protest, or petition filed subsequent to this notice within the time required herein. If an issue of substance is so raised, further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised, it will not be necessary for Applicant to appear or be represented at the hearing before the Commission.

The application is on file with the Commission and is available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13970 Filed 5-16-77;8:45 am]

[Docket Nos. E-9068, E-9118, E-9497]

OHIO EDISON CO.

Filing of Settlement Agreement

MAY 9, 1977.

Take notice that, on May 3, 1977, Ohio Edison Company (Ohio Edison) tendered

for filing to the Commission a settlement agreement between itself and twenty municipal intervenors in the above-captioned proceedings together with a Motion for Approval of Settlement Agreement and Termination of Proceedings.

Ohio Edison states that the Settlement Agreement resolves all issues in controversy between the parties in these proceedings.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before May 27, 1977. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

LOIS D. CASHWELL,
Acting Secretary.

[FR Doc.77-13975 Filed 5-11-77;8:45 am]

[Docket No. G-17350, etc.]

PACIFIC GAS TRANSMISSION CO. AND NORTHWEST PIPELINE CORP.

Order Granting Reconsideration and Amending Prior Order

MAY 9, 1977.

On February 17, 1977, the Commission issued an order in the above docketed proceeding authorizing the continued importation of gas from Canada by Northwest Pipeline Corporation (Northwest) [Docket No. CP75-340] together with permission for Pacific Gas Transmission Company (PGT) [Docket Nos. G-17350, G-17351, CP69-346 and CP69-347] to transport the imported gas on a best efforts basis for the benefit of Northwest. Ordering Paragraph (C) of the February 17, 1977 order conditioned the importation such that none of the volumes "shall be used to displace alternate fuel capability or cause the gas to displace alternate fuel capability." On March 21, 1977, Northwest filed an untimely application for rehearing[1] requesting that the condition contained in Ordering Paragraph (C) be deleted. PGT submitted, on April 4, 1977, a statement in support of the Northwest application.

The most recent Northwest import request is a continuation of a series of arrangements with Canadian companies first authorized in Docket No. CP73-332 by order issued September 21, 1973.[2] The historical context of the Northwest imports is set forth in our February 17, 1977 order in this proceeding, and it is sufficient to note here that the instant application is part of an established pattern of imports that provides a substantial portion of the base supply of Northwest.

In its application for reconsideration, Northwest points out the long-term nature of the Canadian imports and their contribution to base supply. Northwest attempts, thereby, to differentiate its situation from the emergency type imports authorized this part winter,[3] which Northwest surmises, was the cause of the alternate fuel capability condition being imposed on it, since none of Northwest's prior import authorizations contain this restriction. Furthermore, Northwest contends that because the Canadian gas is part of its base supply used to service high priority customers, the possibility could arise that a Northwest customer may use imported gas to displace alternate fuel. Northwest concludes, therefore, that the logical result of the condition in Ordering Paragraph (C) would be to entirely prevent Northwest from being able to take the Canadian gas, thereby depriving its distributor customers of much needed gas supply.

Northwest has protested the inclusion of Ordering Paragraph (C) of the February 17, 1977 order primarily because it is not applicable to its particular situation, but the company also argues that Ordering Paragraph (D), to which Northwest is not opposed, will provide the same public interest protections as were intended by the alternate fuel capability displacement condition in Ordering Paragraph (C). Ordering Paragraph (D) provides that the importation is allowed with the understanding that Northwest may in the future be required by the Commission to sell the Canadian volumes to another pipeline with a greater need to protect high priority uses.

Upon reconsideration, we find that the alternate fuel capability displacement condition contained in Ordering Paragraph (C) of the February 17, 1977, order should be deleted. That restriction was imposed on the recipients of emergency foreign purchases for the purpose of insuring that the vitally needed assistance from Canada would be preserved for uses that only natural gas could satisfy and to prohibit the recipients from utilizing the more expensive imported gas to serve new customers. The Commission continues to encourage Northwest's customers to actively change over to alternate fuels where possible. The Commission is also opposed to the use of imported gas to permit the addition of system customers. However, due to Northwest's need for imported gas to service its base customers and the practical problems Northwest has in monitoring numerous indirect customers, the alternate fuel capability condition imposed on the company by Ordering Paragraph (C) of the February 17, 1977, order should be deleted.

The Commission finds: The motion of Northwest for reconsideration of the order issued on February 17, 1977, should be granted, and Ordering Paragraph (C) of said order should be deleted therefrom.

The Commission orders: The motion for reconsideration of the February 17, 1977, order in Docket Nos. G-17350, et al., filed by Northwest on March 21, 1977, is granted and Ordering Paragraph (C) of said order is herewith deleted therefrom.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13965 Filed 5-16-77;8:45 am]

[Docket No. RP77-62]

TENNESSEE GAS PIPELINE CO.

Filing of Proposed Changes in Rates

MAY 6, 1977.

Take notice that on April 29, 1977, Tennessee Gas Pipeline Company a Division of Tenneco Inc. (Tennessee), tendered for filing proposed changes in its FPC Gas Tariff to be effective June 1, 1977, consisting of the following revised tariff sheets:

Ninth Revised Volume No. 1: Seventh Revised Sheet Nos. 12A and 12B.

Sixth Revised Volume No. 2: Second Revised Sheet Nos. 246D, 247D, 248D, 249H, and 249I; Third Revised Sheet No. 245D; Fourth Revised Sheet Nos. 76 and 215; Fifth Revised Sheet Nos. 53, 54, 77 and 141; Eighth Revised Sheet Nos. 11 and 12.

The proposed changes would increase revenues from jurisdictional sales and services by $41,492,762 based on a test period consisting of the twelve months ended January 31, 1977, adjusted for known changes through October 31, 1977.

Tennessee states that the increased rates are required to reflect declining sales due to gas supply curtailment, an increase in rate of return to 11.67 percent and related income taxes, increased plant and related expenses, and increases in the cost of materials, supplies, wages, and taxes.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13968 Filed 5-16-77;8:45 am]

[Docket No. RP76-99]

TENNESSEE NATURAL GAS LINES, INC.

Filing of Stipulation and Agreement in Settlement of Rate Proceeding

MAY 10, 1977.

Take notice that on May 2, 1977, Tennessee Natural Gas Lines, Inc. (TNGL)

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[1] We will treat the late-filed application of Northwest as a motion for reconsideration.

[2] 50 FPC 825 (1973).

[3] See *Columbia Gas Transmission Corporation*, Docket No. CP77-126 (Orders issued January 18 and February 20, 1977).

filed with the Commission a Stipulation and Agreement proposed in settlement of the above captioned rate proceeding and a motion for approval thereof. TNGL states that the Stipulation and Agreement, if approved by the Commission, provides for resolution of all issues in this proceeding "with the exception of the issue as to the proper-rate-making treatment to be applied to TNGL's LNG facilities and operations, which issue is reserved for hearing."

Any person desiring to be heard or to protest said stipulation and agreement should file comments with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before June 1, 1977. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13977 Filed 5-16-77;8:45 am]

[Docket No. CP77-362]

TEXAS GAS TRANSMISSION CORP.

Application

MAY 6, 1977.

Take notice that on April 28, 1977, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP77-362 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, installation, and operation of two 1,100 horsepower compressor units and related pipeline facilities, and for permission and approval to abandon and relocate certain other facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that on March 17, 1977, Applicant was granted temporary authorization to install and operate a 1,100 horsepower, skid-mounted compressor engine as an emergency and temporary measure to ensure that Applicant would be able to receive 51,000 Mcf of natural gas per day (at 14.73 psia) which had, prior to February 23, 1977, been received through a three-way, best-efforts exchange arrangement among Applicant, Transcontinental Gas Pipe Line Corporation (Transco) and United Gas Pipe Line Company (United). Applicant states that on February 23, 1977, the exchange delieveries were terminated because of United's need for capacity to handle emergency deliveries of gas in the segment of United's system which was involved in the three-way exchange.

It is stated that in addition to providing a long-term solution of the three-way exchange, supra, the facilities have been designed to enable Applicant to bring directly into its system all gas being transported by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and Columbia Gulf Transmission Company (Columbia Gulf) through their offshore facilities, as well as to provide flexibility which is needed in an important segment of Applicant's supply system.

Applicant requests authorization to construct, install, and operate the following facilities:

Approximately 18.88 miles of 20-inch pipeline and appurtenant facilities in Acadia Parish, Louisiana, extending from Applicant's Eunice, Louisiana Compressor Station to the western terminus of Columbia Gulf's Blue Water System;

Two 1,100 horsepower compressor units to be relocated at Applicant's Eunice Compressor Station; and

Approximately .13 miles of 24-inch pipeline interconnecting Applicant's Eunice-Grand Cheniere pipeline and Michigan Wisconsin Pipe Line Company's (Michigan-Wisconsin) 30-inch pipeline near Grand Cheniere, Cameron Parish, Louisiana.

Applicant states that approximately 9.50 miles of the 18.88 miles of 20-inch pipeline would be pipe which would be removed from the Sharon-Carthage line of Applicant and relocated, and that only 9.38 miles of new 20-inch pipeline would be needed to complete the proposed interconnection between the Blue Water System and Application's Eunice Compressor Station. The 9.50 miles of the 13.61 miles of 20-inch loop pipeline to be relocated is the only portion of the 13.61 miles of 20-inch loop pipeline located on the Sharon-Carthage line which is reusable, it is said.

It is stated that the two existing 1,100 horsepower compressor units proposed to be relocated in the Eunice Compressor Station are presently installed in Applicant's Sharon, Louisiana Compressor Station, and that because of declining gas supplies in the North Louisiana and East Texas Areas attached to Applicant's system. Applicant does not foresee utilizing such units in the future. The estimated cost, to be financed from funds on hand, of the proposed facilities, including relocation, is $6,306,120, it is said.

Applicant requests permission and approval to abandon and relocate the following facilities:

Approximately 13.61 miles of 20-inch loop pipeline on its Sharon-Carthage line, of which approximately 9.50 miles would be relocated in South Louisiana; and

Two 1,100 horsepower compressor units proposed to be removed from the Sharon Compressor Station and relocated at Applicant's Eunice Compressor Station.

The 18.88 miles of 20-inch pipeline and the compressors proposed herein would be utilized by Applicant to receive directly into its system deliveries of natural gas transported for Applicant by Columbia Gulf and Tennessee through their offshore facilities, it is said. Applicant states that it proposes to abandon and relocate the reusable portion of the existing 20-inch loop pipeline, which is no longer required for service on the Sharon-Carthage line, to provide a portion of the pipeline required herein, in order to conserve energy and to utilize more fully the facilities of applicant's system. Applicant also proposes to retire two 1,100 horsepower compressor units and the property associated therewith at the Sharon Compressor Station and relocate certain of these facilities at Applicant's Eunice Compressor Station. Applicant states that one unit would transport gas which Applicant receives through the Blue Water System, and that the other unit would be used as a spare, or as required additional compression, in the event that significant additional quantities of gas are transported through the proposed line. Applicant further states that in this connection, the long-term supply projections for Applicant indicates that its major sources would be from the offshore Louisiana and offshore Texas Areas, and the relocation of unused horsepower located in North Louisiana, where development is relatively minor as compared to South Louisiana, provides flexibility in an area of increasing importance at the lowest cost.

It is stated that the other two units presently installed at the Eunice Compressor Station would be used to provide for continuity of service for additional gas supplies, and would be transported for Applicant through the High Island Offshore System and Michigan Wisconsin from Offshore Texas, thus assuring continuity of service for the gas which it would purchase offshore Texas. The Grand Cheniere tie-over to the facilities of Michigan Wisconsin would provide additional flexibility in the event of an outage on either system between Grand Cheniere and Eunice, which is an important segment of Applicant's supply system, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 31, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public conven-

ience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH E. PLUMB,
Secretary.

[FR Doc.77-13966 Filed 5-16-77;8:45 am]

[Docket No. CP76-363]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Petition To Amend

MAY 10, 1977.

Take notice that on April 28, 1977, Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP76-363 a petition to amend the Commission's order of August 13, 1976 (56 FPC—), issued in the instant docket pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) so as to authorize Petitioner to render a new transportation service for Pine Hall Brick and Pipe Company, Inc. (Pine Hall) for gas purchased pursuant to a gas purchase contract, dated March 21, 1977, between Pine Hall and Herbert L. Miller and M. M. Miller, Jr., dba M. M. Miller & Sons (Miller), a producer in Duval County, Texas, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

On August 13, 1976, Petitioner was authorized to transport, on an interruptible basis, up to 1,250 Mcf of natural gas per day for Pine Hall for use in its brick plant at Madison, North Carolina. Petitioner states that it transported such gas to North Carolina Gas Service Division of Pennsylvania and Southern Gas Company (N.C. Gas), one of Petitioner's resale customers served under Rate Schedule CD-2, and that the gas was purchased from Wm. T. Burton Industries, Inc. and El Toro Production Corp., pursuant to a contract dated March 22, 1976, from production in the Egan Field, Acadia Parish, Louisiana. Because of salt water flooding of the well shortly after production commenced, deliveries from such well ceased in October 1976 and have not resumed, it is said. Petitioner states that efforts to rework the well have failed and such contract has been canceled. Petitioner indicates that Pine Hall gas supply has been completely curtailed since the end of November 1976.

It is stated that in order to obtain a supply of gas, Pine Hall has now executed a gas purchase contract, dated March 21, 1977, with Miller to purchase an estimated average daily quantity of 500 Mcf of natural gas and up to 1,250 Mcf per peak day from wells located in the Longhorn West Field, Duval County, Texas for a period ending August 1, 1977. Pine Hall and Miller have the option to extend such sale and purchase of gas under terms to be agreed upon, it is said. Petitioner indicates that Pine Hall would pay Miller $2.25 per million Btu's inclusive of existing taxes levied on the gas prior to delivery.

It is stated that Miller would deliver the subject gas to Esperanza Oil & Gas Company (Esperanza) at the inlet side of the measurement facilities of Esperanza's Benavides (J&J) Gathering System near Petitioner's pipeline in Section 24 of the Agua Poquita Survey Santos Flores Grant A-213, Duval County, Texas, and Esperanza would dehydrate and measure the gas and redeliver such gas to Petitioner at the existing point of interconnection between Esperanza's and Petitioner's pipelines designated Transco Meter Stations Nos. 1010 and 1011. Esperanza would charge Pine Hall 5 cents per Mcf for the gathering, dehydration and measurement services, it is said.

Petitioner states that it has entered into a transportation agreement, dated April 4, 1977, with Pine Hall and N.C. Gas, and that the subject agreement amends their previous transportation agreement dated April 8, 1976. Such agreement, as amended, provides that Petitioner would transport the subject gas for Pine Hall to existing delivery points of N.C. Gas in order that N.C. Gas may deliver such gas to Pine Hall's Madison, North Carolina plant. Petitioner proposes to increase its transportation rates for interruptible transportation into Zone 2 to 45.8 cents per Dekatherm. Pine Hall is said to be in Petitioner's Zone 2.

Petitioner states that it would retain 3.8% of the quantities of gas it receives for compressor fuel and line loss makeup.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 23, 1977 file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13969 Filed 5-16-77;8:45 am]

[Docket No. RP77-64]

VALLEY GAS TRANSMISSION, INC.

Proposed Change in Rates

MAY 9, 1977.

Take notice that on April 29, 1977, Valley Gas Transmission, Inc., ("Valley"), filed proposed increased rates to its jurisdictional sale-for-resale customers. Valley also proposed an increase in its rate for jurisdictional transportation service. The proposed effective date is June 1, 1977.

The increased revenues from the rates as proposed would amount to $290,337 annually.

Any person desiring to be heard or to make any protest with reference to said filing should on or before May 23, 1977, file with the Federal Power Commission, Washington, D.C. 20426 a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13973 Filed 5-16-77;8:45 am]

[Docket No. RP77-94]

WESTERN GAS INTERSTATE CO.

Proposed Changes in FPC Gas Tariff

MAY 9, 1977.

Take notice that on May 2, 1977, Western Gas Interstate Company ("Western") tendered for filing proposed changes in its FPC Gas Tariff to be effective on June 1, 1977, consisting of the following tariff sheets:

Seventh Revised Sheet No. 3A.
First Revised Sheet No. 33A.
First Revised Sheet No. 33B.
First Revised Sheet No. 33C.

The proposed changes would increase revenues from jurisdictional sales by $774,452 based upon the twelve month period ending December 31, 1976, as adjusted. Such revenue increase is exclusive of increases in purchased gas costs which will occur prior to the rates involved becoming effective and which would otherwise be recovered through the purchased gas adjustment clause provisions of Western's tariff. Western states that, at the time it moves to make effective the rates involved in the instant proceeding, it will revise the tendered base tariff rates so as to reflect its actual purchased gas costs as of the time of the rates becoming effective.

Western states that the principal reasons for the proposed rate increase are: (1) increase in overall rate of return necessary to maintain its financial integrity; (2) increases in plant and related cost of service items; (3) increases in cost of materials, supplies, wages, services, and other operating expenses necessary to maintain and operate its pipeline system and appurtenances; (4) increase in working capital; and (5) increases in taxes other than income.

Western states that there are other changes in its tariff in the sheets tendered but that these changes are either minor

word changes for clarification, updating of required information, or changes required to bring such sheets into conformity with the proposed rates.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13972 Filed 5-16-77;8:45 am]

[Docket No. CP77-347]

WESTERN GAS INTERSTATE CO.

Notice of Application

MAY 6, 1977.

Take notice that on April 18, 1977, Western Gas Interstate Company (Applicant), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CP77-347 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 10.12 miles of 4-inch transmission line and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Southern Union Supply Company (Susco), has filed with the Commission applications in Docket Nos. CI76-578 and CI76-579 for authority to sell gas to Southern Union Company (Southern Union) and El Paso Natural Gas Company (El Paso), respectively, and that the gas involved is to be produced for the Gallagher No. 2 Well. Applicant states that the subject gas would be gathered by Phillips Petroleum Company, (Phillips), processed at Phillips' Lusk Gasoline Plant in Lea County, New Mexico, and delivered to El Paso at the tailgate of the Lusk Plant. Applicant further states that the primary purchaser of such gas would be Southern Union, and El Paso would transport the gas to be sold to Southern Union to various points along El Paso's lines in Texas, New Mexico, and Arizona for delivery to Southern Union. Whatever gas is not purchased by Southern Union would be sold by Susco to El Paso, it is said.

It is stated that Susco and Applicant developed a three-well proposal under which gas would be produced by Susco from three wells (The Gallagher No. 3 Well and the Supco State No. 1 Well, in addition to the Gallagher No. 2 Well), and delivered by Applicant through a proposed 4-inch line to a mutually agreeable point of interconnection with the Lusk-to-Caprock 20-inch pipeline of El Paso.

The facilities which Applicant requests authorization to construct and operate are described as follows:

(a) Approximately 10.12 miles of 4-inch transmission line and appurtenant facilities necessary to transport gas from the Gallagher No. 2 Well, the Gallagher No. 3 Well, and the Supco State No. 1 Well in Lea County, New Mexico, to a point of interconnection with the Lusk-to-Caprock 20-inch pipeline of El Paso; and

(b) Authority to transport and deliver said gas to El Paso.

Applicant indicates that the total estimated cost of the proposed facilities is $487,166, which cost would be financed from cash on hand, supplemented as necessary by short-term borrowings.

Applicant asserts that the construction and operation of the proposed transmission facilities, and the subject transportation of such gas pursuant to the three-well proposal would result in greater quantities of gas for the interstate market at lower prices.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 27 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13584 Filed 5-16-77;8:45 am]

[Opinion No. 798; Docket Nos. CP76-220, CI76-346]

ARKANSAS LOUISIANA GAS CO. v. AMAREX, INC.

Opinion and Order Directing the Delivery of Natural Gas

MAY 9, 1977.

1. On December 22, 1975, Arkansas Louisiana Gas Company (Arkla) filed a complaint in Docket No. CP76-220 asking the Commission to direct Amarex, Inc. (Amarex) to deliver Amarex's share of the natural gas produced from the Helmerich & Payne Cupp "C" No. 1 Well, Beckham County, Oklahoma (the Cupp C No. 1 Well) to Arkla pursuant to a prior dedication of that gas to interstate commerce. On January 14, 1976, Amarex filed a petition in Docket No. CI76-346 for a declaratory order that the natural gas in question is not dedicated to Arkla in interstate commerce. The Commission, on January 29, 1976, transmitted a copy of Arkla's complaint to Amarex and gave and published notice of the commencement of both proceedings. On February 17, 1976, Amarex filed an answer to the complaint in which it admitted the allegations of fact but denied the conclusion that the gas in question is deliverable to Arkla, reasserted the allegations in its petition for declaratory relief, moved for consolidation of the two proceedings on the basis of identity of issues and moved, further, for a decision on the pleadings on the basis that there are no factual issues. On March 5, 1976, Arkla filed an answer and joined Amarex's motion insofar as it sought consolidation, but requested a hearing on the ground that "the issue presented in these proceedings may not be entirely a legal issue.

2. By order issued July 15, 1976, the Commission, among other matters, found that there are no factual issues, consolidated Docket Nos. CP76-220 and CI76-346 for the purpose of decision and set a briefing schedule for direct Commission decision. The record before us therefore consists of the pleadings (including the briefs) and the attached documents which have been filed in the respective dockets, together with the notices and orders which have been issued therein. Additionally, we take official notice of Docket No. CS71-92 which contains, among other matters, Amarex's application for the small producer certificate of public convenience and necessity pursuant to which the natural gas service involved herein is claimed by Arkla to have been certificated, as well as certain other documents as specified herein.

THE "DEDICATION"

3. On or about May 4, 1967, the First State Bank of Pittsburg, Pittsburg, Kansas, and Isadore E. De Lappe, as co-trustees of certain testamentary trusts, executed an oil and gas lease (the 1967 Lease) to Sinclair Oil & Gas Company (Sinclair) covering approximately 160 acres which are identified therein as "The Southeast Quarter (SE/4) in Section 22, Township 10N, Range 26W" situ-

ated in Beckham County, Oklahoma,[1] for the term ending September 26, 1972, and as long thereafter as any of the products covered by the lease "is or can be produced." Among other matters, the lease authorized the unitization of the Southeast Quarter or any portion of it and provided, in this connection,

"Any well drilled or operations conducted on any part of each such unit shall be considered a well drilled or operations conducted under this lease, and there shall be allocated to the portion of the above described land included in any such unit such proportion of the actual production from all wells on such unit as lessors' interest, if any, in such portion, computed on an acreage basis, bears to the entire acreage of such unit. And it is understood and agreed that the production so allocated shall be considered for all purposes, including the payment or delivery or royalty, to be the entire production from that portion of the above described land included in such unit in the same manner as though produced from the above described land under the terms of this lease."

In other words, unitization would transform the leasehold into an undivided part of a larger whole.[2]

4. Sinclair's interest in the 1967 Lease was assigned to Amarex on January 15, 1970, as part of an assignment of a large number of leases on that date. Thereafter, under a Gas Purchase Contract dated June 6, 1970 (the 1970 Gas Purchase Contract), Amarex agreed to sell and deliver to Arkla, and Arkla agreed to purchase and receive from Amarex "the natural gas production attributable to [Amarex's] interest in all Contract Wells, and to that end [Amarex] hereby subjects and commits hereto the Contract Leases" for the term ending on the 20th anniversary of the date of the first delivery from the subject properties.[3] The term, "'Contract wells'," in the 1970 Gas Purchase Contract, "refers to all wells now or hereafter completed as commercially productive of natural gas on lands covered by the Contract Leases or on a production unit which includes any part of said lands," and the term, "'Contract Leases' refers to the oil and gas leases and other mineral interests described in the schedule attached hereto and made part hereof as Exhibit A."[4]

5. Pursuant to another agreement dated June 6, 1970, Amarex assigned a 25 percent interest in the Exhibit A Contract Leases, including the 1967 Lease, to Arkla Exploration Company (Arkla Exploration), an affiliate of Arkla.[5] And by agreement dated August 20, 1970,[6] Arkla Exploration agreed to sell and deliver to Arkla, and Arkla agreed to purchase and receive form Arkla Exploration, Arkla Exploration's "share of all production attributable to" the Exhibit A Contract Leases, including the 1967 Lease, "on the same terms and conditions" as under the 1970 Gas Purchase Contract.

6. On November 2, 1970, Amarex filed an application in Docket No. CS71-92 pursuant to § 157.40 of the Commission's Regulations under the Natural Gas Act for a small producer certificate of public convenience and necessity. By Order No. 428 issued March 18, 1971, the Commission amended § 157.40 to provide in subsection (b) that such certificates would thereafter be blanket certificates covering existing and future jurisdictional sales.[7] And thereafter, by order issued in Docket No. CS71-92 on August 12, 1971, the Commission issued a blanket small producer certificate to Amarex (and to the applicants in numerous other dockets covered by the order) "authorizing the sale for resale and delivery of natural gas in interstate commerce by Applicants . . . as more fully described in the applications in this proceeding." The order also provides,

"The grant of the certificates * * * shall not imply approval of all of the terms of the contracts, particularly as to the cessation of service upon the termination of said contracts as provided by Section 7(b) of the Natural Gas Act."

7. Deliveries of natural gas to Arkla pursuant to Amarex's certificate of public convenience and necessity in Docket No. CS71-92 commenced under the 1970 Gas Purchase Contract on November 4, 1971, from acreage other than the Southeast Quarter and, conversely, "no natural gas was ever produced under the terms of the 1967 Lease."[8] On or about April 18, 1972, some five months before the primary term of the 1967 Lease was about to expire, The First State Bank of Pittsburg, Pittsburg, Kansas, and Isadore E. De Lappe, as co-trustees of the same testamentary trusts, executed an oil and gas lease (the 1972 Lease) of the Southeast Quarter to Amarex for a primary term of five years beginning September 26, 1972. The 1972 Lease is prepared on a more current revision of the form on which the 1967 Lease is prepared and contains provisions, including these pertaining to unitization, which are similar but not identical to those contained in the 1967 Lease. Furthermore, Amarex assigned a 25 percent interest in the 1972 Lease to Arkla Exploration pursuant to their agreement of June 6, 1970.

8. On February 17, 1975, Helmerich & Payne, as operator for Amarex and others, commenced drilling the Cupp C No. 1 Well in the Southwest Quarter in Section 22, Township 10N, Range 26W, Beckham County, Oklahoma (the Southwest Quarter), which apparently has not at any time been dedicated to interstate commerce, and the well was completed as a commercial producer of natural gas on August 21, 1975. The Southeast and Southwest Quarters, together with the other two quarters of Section 22, Township 10N, Range 26W, Beckham County, Oklahoma, have been designated as a 640 acre unit for the production of natural gas from the Cupp C No. 1 Well,[9] and the respective working interests attributable to the leaseholds embraced by that unit are committed for sale, and the production therefrom has been delivered (through the end of May 1976), as follows:

[In percent]

	Committed	Delivered[1]
To Michigan Wisconsin Pipe Line Co. (interstate)	36.42578	76.5
To Oklahoma Natural Gas Co. (intrastate)	33.57422	8.7
To Arkla (Arkla Exploration's interest—interstate)	6.25000	14.8
In dispute (Amarex's interest)	18.75000	0
Total	100.00000	100.0

[1] Although Amarex contends that Arkla is taking delivery of that part of Amarex's interest which exceeds Arkla's 6.25 pct interest, Arkla responds that its overtakes are within the parameters of the industry practice of balancing new wells pending the marketing of all fractional interests and the development of delivery patterns. Payments due Amarex from Arkla are being held in a suspense account pending resolution of the controversy and a final accounting of the volumes of gas.

Positions of the Parties

9. Amarex takes the position in its initial brief that its share of the natural gas produced from the Cupp C No.

[1] For convenience and particularly to distinguish the acreage from other acreage with which it was unitized, "The Southeast Quarter (SE/4) in Section 22, Township 10N, Range 26W" will be referred to simply as the Southeast Quarter.

[2] The lease also provides, "All provisions hereof, express or implied, shall be subject to all federal and state laws and the orders, rules or regulations (and interpretations thereof) of all governmental agencies administering the same * * *"

[3] The earliest date on which the 1970 Gas Purchase Contract can expire according to its terms is November 4, 1991.

[4] Exhibit A consists of some 134 pages headed "Undeveloped Oil & Gas Leases". In view of the differences in the numbers of leases identified on each page, and the deletions and hand written additions, an exact count of the number of leases embraced by Exhibit A has not been attempted. It appears, however, that at least 2,000 and probably not more than 3,000 leases, including the 1967 Lease, are so embraced by the 1970 Gas Purchase Contract.

[5] The agreement recites that Exhibit A covers approximately 290,000 net leasehold acres.

[6] The agreement dated August 20, 1970, is filed (insofar as it concerns Oklahoma acreage) as Arkla Exploration's FPC Gas Rate Schedule No. 29 and covers natural gas service which was certificated in Docket No. 72-81 by order issued March 27, 1972. Official notice is taken of the foregoing documents.

[7] Official notice is taken of Order No. 428. The Commission indicated therein that pending applications whould not have to be refiled under the amended regulation and, further, that "small producers shall be required to comply with Section 7(b) of the Act with respect to every small producer sale exempted herein."

[8] We read the foregoing statement in Amarex's initial brief as meaning that no natural gas was produced from the Southeast Quarter or from any production unit embracing any part of the Southeast Quarter during the primary term of the 1967 Lease which ended September 26, 1972. But we believe that fact to be immaterial. Under the Commission's concept that the service in which the producer engages under the Natural Gas Act is distinct from the contract which regulates the producer's relationship with the pipeline company (which concept was ratified by the Supreme Court in *Sunray, infra*), the initiation of deliveries under the 1970 Gas Purchase Contract on November 4, 1971, effected a "dedication" of the natural gas reserves underlying all of the acreage described in Exhibit A to that contract.

[9] No information has been furnished as to when the production unit was formed.

1 Well is not dedicated to Arkla in interstate commerce because the 1972 Lease of the Southeast Quarter is not subject to the 1970 Gas Purchase Contract. Amarex asserts that it agreed to sell and deliver, and that Arkla agreed to purchase and receive, "the natural gas production attributable to [Amarex's] interest in all Contract Wells, and to that extent [*sic.*, end] hereby subjects and commits hereto the Contract Leases." The term "Contract Wells" refers to wells "on lands covered by the Contract Leases", Amarex argues, and no lands are covered by a lease after it expires. Furthermore, Amarex asserts the term "Contract Leases" refers to those which are described in Exhibit A, and since the latter document refers to the lease of the Southeast Quarter in terms of both a lease number and an expiration date it is clear that the 1967 Lease, and not the 1972 Lease, was dedicated to the 1970 Gas Purchase Contract. And finally, Amarex argues, there is no provision in the 1970 Gas Purchase Contract for the inclusion of after-acquired leases as in the case of certain other gas purchase contracts between Arkla and various producers, copies of the pertinent portions of which are attached to Amarex's intial brief.

10. Arkla, in its initial brief, takes the opposite position that Amarex's interest in the natural gas produced from the Cupp C No. 1 Well is dedicated to it in interstate commerce and, as a result, that dedicated supply cannot be withdrawn from interstate commerce without Commission approval. Among other court decisions, it relies, in this connection, upon *The Atlantic Refining Co., et al.* v. *Public Service Commission of the State of New York, et al.*, 360 U.S. 378 (1959) (known as the *CATCO* decision) and *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 364 U.S. 137 (1960). Furthermore Arkla relies on *Pioneer Gathering System, Inc., et al.*, 23 FPC 261, 263 (1960), *Cumberland Natural Gas Company, Inc., et al.*, 34 FPC 132, 137 (1965), *Mitchell Energy Corporation*, — FPC —, (Opinion No. 733) (1975),[10] and *United Gas Pipe Line Co.* v. *Billy J. McCombs, et al.*, — FPC — (Opinion No. 740) (1975)[11] for the proposition that the dedication which is consummated by the initiation of deliveries under a certificated gas purchase contract includes all of the acreage which is described in the contract, whether proven or unproven, and whether connected to interstate transportation facilities or not so connected. Accordingly, Arkla asserts that the commencement of deliveries to it on November 4, 1971, consummated the dedication to it in interstate commerce of all of the acreage which is described in the 1970 Gas Purchase Contract.[12]

11. Turning to the question of the expiration of the 1967 Lease, Arkla relies on *El Paso Natural Gas Company, et al.*, — FPC —, (Opinion No. 737) (1975),[13] wherein the Commission said that "it makes no difference whether a lease is transferred or terminates, the obligation of service imposed upon the dedicated gas continues." Arkla asserts, in this connection, that the Supreme Court in *Sunray, supra*, ratified the Commission's long-standing view that an obligation to continue service arises under Section 7 of the Natural Gas Act, and that this obligation exists separate and apart from any contractual obligation to continue service and, therefore, outlasts the term of a contract to sell natural gas. Furthermore, Arkla adds, the statutory obligation to continue service exists both as to contracts for the sale of natural gas and as to the underlying leases, termination of which may impair the obligation of the contract but not the separate and distinct statutory obligation to continue service. Amarex has made no showing to justify abandonment, Arkla concludes, and consequently the Commission should direct Amarex to commence deliveries to it immediately in accordance with the dedication.[14]

12. Although the Commission staff did not file an initial brief, it filed a reply brief in which it asserts that Amarex's presentation of the issue finesses the critical question of whether the expiration of the 1967 Lease terminated the dedication to Arkla of the natural gas reserves underlying (and/or attributed to) the Southeast Quarter:

> Once it is determined that the 1967 lease reserves were dedicated to the 1970 contract and since no abandonment has been authorized under Section 7(b) of the Natural Gas Act, it is simply irrelevant that the subject reserves are now covered by a 1972 lease that was executed after the 1970 contract. Amarex dedicated the subject reserves to the 1970 contract and now that those supplies are being produced from the Cupp C No. 1 Well, Arkla is clearly entitled to the share of production allocated to the reserves committed by Amarex under the 1967 lease to the 1970 contract.

13. Amarex, in its reply brief, attempts to clarify certain statements in Arkla's initial brief; continues to argue that the 1972 Lease is not dedicated to the 1970 Gas Purchase Contract; and asserts that Arkla, by its silence with respect to that issue, concedes "an essential element of" Amarex's case, "for unless the 1972 Lease is covered by the 1970 [Gas Purchase] Contract, there can be no dedication of that lease to interstate use." Amarex cites numerous Commission decisions to the effect that dedication is to be determined by the terms of the contract, and it would distinguish *El Paso, supra*, on the ground that the 1972 Lease is not covered by the 1970 Gas Purchase Contract and, consequently, "the public has not relied on gas which may be produced by virtue of the 1972 Lease." And the Commission's application of *El Paso, supra*, to the present situation, Amarex urges, would invade the integrity of State recording acts by which bona fide purchasers take free and clear of unrecorded encumbrances, and would also violate the public policy against perpetuities insofar as rights created by Section 7(b) may vest at remote times in the future.

14. And Arkla, in its reply brief, asserts that Amarex dedicated the natural gas production attributable to Amarex's interest in Contract Wells which, in turn, are wells on lands covered by the Contract Leases or on production units which include any part of said lands. The reference to Contract Leases, Arkla argues, serves only to identify the acreage, as is evidenced by the fact that the term "Contract Leases" includes both the "oil and gas leases" and the "other mineral interests" described in Exhibit A. And the "mineral interests", Arkla continues to argue, are not limited in duration as in the case of the "oil and gas leases". The Cupp C No. 1 Well is completed on a production unit which includes the Southeast Quarter which, in turn, is acreage described in Exhibit A to the 1970 Gas Purchase Contract and is, therefore, a Contract Well, Arkla concludes.[15]

THE DECISION

15. While Amarex expresses its position in terms of the nondedication of a particular lease, and Arkla asserts its claim in terms of the dedication of particular acreage and/or the natural gas reserves underlying the acreage, the Natural Gas Act establishes no procedures by which leases, acreage or reserves, or anything else, for that matter, can be dedicated to interstate commerce. Sec-

[10] Affirmed, *Mitchell Energy Corporation* v. *Federal Power Commission*, — F.2d — (No. 75-3110) (CA5, 1976).

[11] Reversed on other grounds October 18, 1976, *sub nom Billy J. McCombs, et al.* v. *Federal Power Commission*, No. 75-1829, CA10. Petition for rehearing pending. Arkla cites this case for the additional proposition that the share of production which is attributable to the Southeast Quarter is part of the dedicated gas supply even though the Cupp C No. 1 Well is completed on undedicated acreage.

[12] Arkla points out that, referring to *Phillips Petroleum Co.* v. *State of Wisconsin*, 347 U.S. 672 (1954), the United States Court of Appeals for the Third Circuit said in *J. M. Huber Corporation* v. *Federal Power Commission*, 236 F.2d 550, 558 (1956), "We think the sense of the Phillips decision is altogether opposed to permitting the Commission's control of sales to be nullified by the independent producer's abandonment of those sales at will."

[13] Reversed December 13, 1976, *sub nom Southland Royalty Company et al.* v. *Federal Power Commission*, Nos. 75-3373, et al., CA5. See discussion, infra.

[14] While Arkla also asks for restitution, Amarex has not on this record received any of its entitlement attributable to the Cupp C No. 1 Well. Without discoursing this subject further, the sense of the Ordering Paragraph is to require Amarex to deliver or cause delivery to Arkla of Amarex's share of the production from that well from August 21, 1975, on which date it was completed as a commercial producer of natural gas, forward.

[15] Arkla asserts, additionally, that expiration dates of leases are shown on Exhibit A because it was prepared for attachment to the agreement of June 6, 1970, by which Amarex sold at 25 percent interest in the leases to Arkla Exploration, as well as for attachment to the 1970 Gas Purchase Contract.

tion 7 of that Act establishes, instead, a procedure for certification, wherein subsection (c) provides in pertinent part,

"No natural-gas company * * * shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations. * * *"

and subsection (e) provides, also in pertinent part,

"* * * [A] certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed * * * and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present of future public convenience and necessity. * * *"

16. Accordingly, while the Natural Gas Act is not couched in terms of dedication to interstate commerce, it does establish a procedure by which the Commission can certificate sales of natural gas in interstate commerce and, as the Supreme Court found in *Sunray, supra*,[16] the natural gas service which a particular sale initiates. Once the service is certificated, and the certificate is accepted and the service initiated, the service may not thereafter be discontinued without the permission and approval of the Commission under subsection (b) of Section 7 which provides,

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

17. The status of natural gas service as being terminable, lawfully, only through such Section 7(b) permission and approval, is commonly expressed in terms of particular leases being dedicated to interstate commerce, or in terms of the leaseholds or acreage covered by the leases as being so dedicated, or in terms of the underlying reserves or gas supply as being so dedicated. In other words, the term "dedicated" is commonly used by the natural gas industry and the Commission, as well as by the courts, to express the existence of that legal status. But, as the arguments of Amarex and Arkla demonstrate in this instance, the existence of the legal relationship known as "dedication" must be determined on a case by case basis.

18. In order to determine which of the parties is entitled to receive the natural gas from the well in question, we must look to the parameters of the certificated service as they are revealed by the documents through which it was initiated. To that end we turn to the application which Amarex filed in Docket No. CS71-92 for the small producer certificate of public convenience and necessity authorizing it to initiate the service in question, and the Commission's order of August 12, 1971, granting the application and issuing the certificate. *United Gas Pipe Line Company* v. *Billy J. McCombs, et al., supra.* And we focus on the question of whether the certificated service, or any part of it, is limited in its duration.

19. In looking to Amarex's application in Docket No. CS71-92 and the Commission's order of August 12, 1971, granting the application, we are guided by the Supreme Court's statement in *Sun Oil Company* v. *Federal Power Commission*, 364 U.S. 170, 175 (1960):

[W]e agree with the Commission that the 1956 certificate was a permanent one. The application itself, under the construction we have given the statute in *Sunray*, did not with any explicitness ask for a limited certificate. It asked for one 'authorizing the sale of natural gas' under the 1947 contract; but as we said in *Sunray*, a permanent certificate would do that * * *. And the certificate issued makes no reference to any limitation of time. This is in contrast with explicit references to the limitation in those instances where the Commission had previously issued term certificates. [Footnote omitted.] The Commission's order, which blanketed the many applications before it in the mass proceeding, is no more explicit about limitation than the application, and refers, in fact, to the certificate as both 'authorizing the sale' of natural gas, and authorizing a 'service,' which accords with our construction of § 7(c) in *Sunray*. Under these circumstances we would hardly see any basis for overturning the Commission's view that no limitation as to time was implied."

20. Upon reviewing in their entireties Amarex's application for the certificate and the Commission's order issuing the certificate, we find nothing to suggest that Amarex was then seeking or that the Commission was then issuing a certificate which would be limited in its duration either with respect to the entire panorama of Amarex's service or with respect to any part of its service. And we find that no limitation in the duration of Amarex's service or any part of its service, including its service from or attributable to any one property and its service from any one gas producing well, was implied.

21. Turning to the 1970 Gas Purchase Contract, we find no suggestion of any limitation in the duration of any part of the certificated service which was initiated pursuant thereto[17] other than the possible limitation advocated by Amarex which is inherent in the expiration of a fixed term oil and gas lease. We believe, to the contrary, that unless there is a specific exercise of the Commission's abandonment authority under Section 7(b) of the Natural Gas Act in the order granting a certificate under which a sale is initiated, as where abandonment is authorized prospectively in the case of a limited term certificate, limitations of time in a gas purchase contract and in the underlying leases should not operate as limitations in the duration of the certificated service.[17]

22. As Arkla points out in its reply brief, and there is merit in its argument the term "Contract Leases" refers to both the "oil and gas leases" and to the "other mineral interests" which are described in Exhibit A; and since the "other mineral interests" do not have an inherent time limitation as in the case of the "oil and gas leases", the descriptions in Exhibit A are identifications of particular acreage (embracing both the "oil and gas leases" and the "other mineral interests") rather than identifications of particular leasehold tenures (embracing only the "oil and gas leases"). We would add that such a construction is reinforced by the fact that the term "Contract Leases" is defined by reference to the word "leases" (as well as to "interests"); and while the word "leases" can refer to specialized contracts pertaining to land and interests in land, the word "leases" can also refer to the land or interests land which are the subject of the specialized contracts. And the latter is a less strained and more natural construction in the light of the reference to "other mineral interests". To construe the term "Contract

[16] 364 U.S., at pages 147 to 151.

[17] Although a limitation in the duration of natural gas service pursuant to the 1970 Gas Purchase Contract would not have the legal effect of limiting the duration of Amarex's service under its small producer certificate (*Sunray* and *Sun Oil, supra*), it is the sense of this and the following three paragraphs that when the 1970 Gas Purchase Contract and the 1967 Lease are viewed against the background of the principal court and Commission decisions pertaining to the duration and other parameters of certificated service, those documents are consistent with the unlimited duration of the service embraced by Amarex's small producer certificate as found in the preceding paragraph.

[17] As noted, the Commission's order of August 12, 1971, issuing the small producer certificate in question, states in furtherance of *Sunray* and *Sun Oil, supra*, that the grant of the certificate shall not imply approval of the terms relating to the cessation of service upon the termination of a contract. Since service under the 1970 Gas Purchase Contract is dependent upon service from the underlying leases, we believe that *Sunray* and *Sun Oil, supra*, should apply to the leases underlying the 1970 Gas Purchase Contract, as well as to that contract itself. In other words, we would not imply from the primary term of the 1967 Lease any limitation in the duration of the natural gas service from or attributable to that lease. Such service should be limited in its duration only by an express grant of abandonment authorization pursuant to Section 7(b), either prospectively as in the case of a limited term certificate, which was not done in this case, or subsequently. And our construction, *infra*, of the 1967 Lease in a manner which is consistent with our foregoing views is facilitated by the provisions in both leases to the effect that all of their provisions, express or implied, are subject to the Natural Gas Act and to the orders, rules or regulations (and interpretations thereof) of the Commission.

Leases" as identifying particular leasehold tenures, as Amarex contends, would clear the way "for every indepened-ent producer of natural gas to seek certification only for the limited period of its initial contract with the transmission company, and thus automatically be free at a future date, untrammeled by Commission regulation, to reassess whether it desired to continue serving the interstate market." *Sunray, supra,* 364 U.S., at page 142.

23. Furthermore, we find no suggestion in the 1967 Lease that natural gas service from the Southeast Quarter, or from a production unit embracing the Southeast Quarter commenced after the expiration of the primary term of that lease, should not be included in the service which was certificated in Docket No. CS71–92 and initiated on November 4, 1971. The Supreme Court said in *Sunray, supra* (364 U.S., at page 156), quoting in part from *CATCO, supra,*

> An initial application of an independent producer, to make movements of natural gas in interstate commerce, leads to a certificate of public convenience and necessity under which the Commission controls the basis on which "gas may be initially dedicated to interstate use. Moreover, once so dedicated there can be no withdrawal of that supply from continued interstate movement without Commission approval * * *"

The Commission elaborated upon the parameters of that dedicated supply in *Pioneer* and *Cumberland, supra,* indicating that the commencement of service from any of the acreage described in a gas purchase contract commits all of the acreage described therein to the service, whether proven or unproven, and whether connected to interstate transportation facilities or not so connected. *CATCO, Sunray, Pioneer,* and *Cumberland, supra,* all predated the 1967 Lease which, as noted, states that all of its provisions, "express or implied, shall be subject to all federal and state laws and the orders, rules, or regulations (and interpretations thereof) of all governmental agencies administering the same * * *." Given this background and the foregoing lease provision, Amarex cannot complain that the natural gas service from the Southeast Quarter, or from a production unit embracing the Southeast Quarter, was committed to interstate use by reason of production elsewhere as distinguished from production from or attributable to the Southeast Quarter.

24. From the foregoing, we find and conclude that no limitation in the duration of Amarex's service or any part of its service initiated pursuant to the 1970 Gas Purchase Contract under its blanket small producer certificate of public convenience and necessity issued in Docket No. CS71–92 is to be found in or implied from the 1970 Gas Purchase Contract or the 1967 Lease. We find, further, that Amarex's said certificate embraces all of the natural gas production from or attributable to the acreage which is identified in Exhibit A as being subject to the 1970 Gas Purchase Contract including, without limitation, the Southeast Quarter.

25. We turn, then, to the further question of the effect, if any, of the expiration of the primary term of the 1967 Lease on the certificated service. And we find that on December 13, 1976, while this consolidated proceeding was pending before us for decision, the United States Court of Appeals for the Fifth Circuit reversed our decision in *El Paso, supra, sub nom Southland Royalty Company, et al.* v. *Federal Power Commission,* 543 F.2d 1134, characterizing the principal issue as one of the "property rights vs. regulatory powers":

> Does the lessee under a 50-year fixed-term mineral lease, by making certificated sales of leasehold natural gas in interstate commerce, thereby dedicate to interstate commerce the gas which remains in the ground at the end of the 50th year?

The Fifth Circuit answered the question which it thus framed in the negative, rationalizing that under Texas law pertaining to real property "a person holding a present interest in real property which is limited in duration cannot create an estate which will extend beyond the term of his interest." [19]

26. We are gravely concerned that the Fifth Circuit's decision in *Southland* may open the floodgates of deregulation contrary to the public interest. In recent years the growth of the free or intrastate market for natural gas has effectively eroded the Commission's ability to regulate the price of natural gas flowing in the interstate market. But the Commission has been able to maintain the flow, principally because its Section 7(b) dike stood sacrosanct against the eroding forces of the intrastate market and would not permit natural gas service to be terminated without the Commission's permission and approval. The first breach in that dike appeared on October 18, 1976, when the United States Court of Appeals for the Tenth Circuit held in *McCombs, supra* that a de facto abandonment had occurred without the required statutory hearing and finding by the Commission. And two months later *Southland* revealed the course by which that trickle could develop into a significant flow and thereby undermine the integrity of Section 7(b) if that dike is not now plugged by judicial or legislative action.

27. In *Sunray* the Supreme Court ratified the Commission's long standing view that an obligation to continue service exists under Section 7 of the Natural Gas Act, and that such obligation is separate and apart from any contractual obligation to continue service. If, therefore, a gas purchase contract should expire or otherwise terminate, that separate statutory obligation would require the service to be continued until we permit and approve its termination. The gas consuming public will be able to rely on that service obligation so long as all or substantially all of the oil and gas leases used by the natural gas industry continue to provide in their habendum clauses that the leases shall remain in force for the life of the underlying reserves. But should the natural gas industry gradually change to fixed term leases in the light of *Southland,* and particularly if the industry should change to short term leases on a universal or quasi-universal basis, the statutory service obligation could be circumvented through the terminations of the oil and gas leases underlying that obligation. The gas could be lost to those who had been dependent on it, and our ability to carry out our mission to regulate the price of natural gas flowing in the interstate market would be eroded further, possibly to the point of deregulation, because we could not require the flow to be maintained.

28. If there is a separate statutory service obligation, as the Supreme Court has confirmed, in *Sunray,* why should it not apply to the oil and gas leases underlying gas purchase contracts, as well as to the contracts themselves, to the end that the integrity of that service would be maintained? The Fifth Circuit responds in *Southland* that one having an interest in real property which is limited in time cannot create an estate which will extend beyond the term of his interest. But that rationale does not address the fact that the interest which is limited in time was created by an oil and gas lease, and that an oil and gas lease, like a gas purchase contract, is a specialized form of contract. And the Fifth Circuit would leave us on a carousel on which we find that the statutory service obligation will survive the term of a gas purchase contract but cannot survive the term of an oil and gas lease underlying that contract.

29. If it is "black letter law" that one having an interest in real property which is limited in time cannot create an estate which will extend beyond the term of his interest", so, too, it is the law of the land that the Natural Gas Act, as expressed in Section 1(b), applies "to the sale in interstate commerce of natural gas for resale for ultimate public consumption". In *Interstate Natural Gas Co., Inc.,* v. *Federal Power Commission,* 331 U.S. 682 (1947), in which the Commission's jurisdiction to regulate intrastate (field) sales of natural gas for eventual interstate consumption was unsuccessfully challenged, the Supreme Court said, at pages 692 and 693:

> We have held that these sales are in interstate commerce. It cannot be doubted that their regulation is predominantly a matter of national as contrasted to local concern. All the gas sold in these transactions is destined for consumption in States other than Louisiana. Unreasonable charges exacted at this stage of the interstate movement become perpetuated in large part in fixed items of costs which must be covered by rates charged subsequent purchasers of the gas, including the ultimate consumer. It was to avoid such situations that the Natural Gas Act was passed. [Footnote omitted.]

[19] Petitions for writs of certiorari were filed in the Supreme Court of the United States by the State of California on February 12 1977 (No. 76–1114), and by El Paso Natural Gas Company on February 16, 1977 (No. 76–1133), and will soon be filed by this Commission.

And in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), the Supreme Court quoted the foregoing with approval and added, at page 681:

> The *Interstate* case is * * * said to be distinguishable in that it did not involve an asserted conflict with state regulation, and federal control was not opposed by the state authorities, while in the instant case there are said to be conflicting state regulations, and federal jurisdiction is vigorously opposed by the producing states. The short answer to this contention is that the jurisdiction of the Federal Power Commission was not intended to vary from state to state, depending upon the degree of state regulation and of state opposition to federal control."

And the Supreme Court added, further, at pages 682 to 684:

> There can be no dispute that the overriding congressional purpose was to plug the "gap" in regulation of natural-gas companies resulting from judicial decisions prohibiting, on federal constitutional grounds, state regulation of many of the interstate commerce aspects of the natural-gas business. A significant part of this gap was created by cases holding that "the regulation of wholesale rates of gas and electrical energy moving in interstate commerce is beyond the constitutional powers of the States." *Interstate Natural Gas Co.* v. *Federal Power Commission*, *supra* at 689. The Committee reports on the bill that became the Natural Gas Act specifically referred to two of these cases and to the necessity of federal regulation to occupy the hiatus created by them. Thus, we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems. [Footnotes omitted.]

30. As a result of these decisions, we believe that any conflicts between the "black letter law" on which the Fifth Circuit relies in *Southland*, and the Natural Gas Act, must be resolved in favor of the latter and the service obligation which it creates, particularly where a lease, such as the 1967 Lease, unlike those in *Southland*[20], declares:

> All provisions hereof, express or implied, shall be subject to all federal and state laws and the orders, rules, or regulations (and interpretations thereof) of all governmental bodies administering the same * * *.

And whether or not a lease contains such a provision, we believe that anyone who entered into an oil and gas lease on or after June 21, 1938, which is the date on which the Natural Gas Act was approved, and, in any event, on or after June 7, 1954, which is the date on which the Supreme Court held in *Phillips* that independent producers of natural gas are subject to regulation under the Natural Gas Act, did so, and anyone who now enters into such a lease, does so, with actual or constructive knowledge of the provisions of the Natural Gas Act and/or the far-reaching effect of the *Phillips* decision. The 1925 lessors in *Southland*, on the other hand, obviously could not have known that Congress would regulate the interstate aspects of natural gas some 13 years later.

31. The habendum clause which is common to the *Southland leases* (describes them as extending:

> * * * for the term of Twelve (12) years from the date hereof and as much longer thereafter as oil or gas (or other minerals, if produced hereunder) are produced from said land. Provided, that this lease shall not remain in force longer than fifty (50) years from this date * * *.

The leases are, therefore, life-of-the-reserve leases, such as are universal or almost universal in the natural gas industry today, but with outside fixed termination dates. The leases reached the Fifth Circuit in the context of those fixed termination dates, and its decision in *Southland* was prepared and issued in the same context.

32. The habendum clause of the 1967 Lease provides, on the other hand,

> This lease shall remain in force for a term ending September 26 1972, and as long thereafter as oil, gas, casinghead gas, casinghead gasoline or any of the products covered by this lease is or can be produced.

Since it does not have an outside fixed termination date, as in the case of the *Southland* leases, the 1967 Lease contemplates without question that certificated natural gas service from or attributable to the Southeast Quarter might continue indefinitely and, in any event, beyond the dates on which the lessors' interests might terminate or be transferred. It contemplates that no minerals covered by the lease of any economic consequence will remain in the ground at the time of its termination. And the primary or front-end termination date serves the obvious purpose, not of limiting the duration of the estate created by the lease, but of inducing the tenant to commence an early realization of any productive potential of the Southeast Quarter. Such date poses a threat that if the tenant does not start producing royalties for the lessors within the specified period, the lessors will be free to permit some other tenant to do so. In combination with another provision discussed infra under which the tenant is required to pay rentals so long as the Southeast Quarter is not productive, it deters the tenant from permitting the acreage to lie "fallow". In these respects, the termination provision of the 1967 Lease differs from those of the *Southland* leases.

33. Furthermore, the 1967 Lease argumentively did not expire on September 26, 1972. By its terms it was to remain in force as long as natural gas, among other products, "can be produced". A gas well was completed into the Southwest Quarter on August 21, 1975, and the Southeast and Southwest Quarters were unitized with two other quarters to obviate the necessity of drilling offset wells to protect the owners other than those of the Southwest Quarter. The parties thereby assumed the existence of natural gas on an economic basis underlying the Southeast Quarter, and considering the length of time which is required for the formation of natural gas, there exists a rational basis for finding, as we do, the natural gas was capable of economic production from, or at least attributable to, the Southeast Quarter on September 26, 1972.

34. We would note, in this connection, that there is no limit to the number of pre-drilling rental payments discussed infra which are permissible, and that the payments which were apparently made to extend the life of the 1972 Lease from year to year could have been applied to extensions without interruption of the 1967 Lease. Amarex contends that the 1967 Lease per se was dedicated under the 1970 Gas Purchase Contract and, in the light of that contention, we find that the 1972 Lease should be treated as an extension of the 1967 Lease for the purpose of enforcing its obligation under the Natural Gas Act to maintain interstate natural gas service.

35. In keeping with the Supreme Court's views in Phillips that the jurisdition of the Commission should not vary from state to state, depending upon state law, we believe that the statutory service obligation should not depend upon the construction under state law of an oil and gas lease, or upon the term of such a lease, or upon a question of whether such a lease is extended or replaced by a later lease. If the principal issue was correctly characterized in Southland as one of "property rights vs. regulatory powers", then the statutory service obligation should depend upon the extent to which Congress occupied the interstate commerce of natural gas and the supremacy of the Natural Gas Act over *any* inconsistent state law.[21]

36. The Supreme Court said in Phillips, in this connection, at page 682, that the Natural Gas Act gives the Commission jurisdiction over "all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company." In the context of the free or intrastate market for natural gas which, of course, did not exist as a material market force at the time of Phillips, we believe that any state regulation (including a court decision which is based on state law) which adversely affects present or future volumes of natural gas

[20] For the purpose of comparison, we take official notice of the two leases which are described in, and the subject of, the *Southland* decision: The Waddell lease dated July 14, 1925, begins on page 135 of the Joint Appendix filed therein in the United States Court of Appeals for the Fifth Circuit, and the Goldsmith lease, dated August 7, 1925, begins on page 293 thereof. Both leases appear to have been prepared on the same oil and gas lease form.

[21] Speaking of the Natural Gas Act, the United States Court of Appeals for the Eighth Circuit said in *State Corporation Commission of Kansas* v. *Federal Power Commission*, 206 F. 2d 690 (1953), at page 705, "[T]here is no room for the exercise of any local power to obstruct or prevent the lawful functioning of the federal agency entrusted with the federal power of regulation. The federal power to regulate the commerce in natural gas derives directly from the construction and is, of course, the dominant power. To the extent that Congress has entered the field, exercised its power and authorized its Commission to regulate charges by natural gas companies for the gas they produce and sell in interstate commerce for resale, its mandate must prevail."

in interstate commerce affects interstate "wholesales" of natural gas within the meaning of Phillips, including the price of that gas.

37. Our foregoing views are reinforced by the Supreme Court's decision in *Northern Natural Gas Co.* v. *State Corporation Commission of Kansas*, 372 U.S. 84 (1963), overturning a state conservation measure which affected natural gas in place and consequently, property rights to that gas, wherein the Supreme Court said with respect to the Natural Gas Act, at page 91:

> The federal regulatory scheme leaves no room either for direct state regulation of the prices of interstate wholesales of natural gas, *Natural Gas Pipeline Co.* v. *Panoma Corp.*, 349 U.S. 44, or for state regulations which would indirectly achieve the same result. These state orders necessarily deal with matters which directly affect the ability of the Federal Power Commission to regulate comprehensively and effectively the transportation and sale of natural gas, and to achieve the uniformity of regulation which was an objective of the Natural Gas Act. They, therefore, invalidly invade the federal agency's exclusive domain. (Footnote omitted.)

And they are ultimately confirmed by *United Gas Improvement Co.* v. *Continental Oil Co.*, et al., 381 U.S. 392 (1965) (known as the Rayne Field case), wherein the Supreme Court confirmed the Commission's assertion of jurisdiction over a sale of natural gas in place, noting that state law did not recognize such a sale, and stating, at page 400, "A regulatory statute such as the Natural Gas Act would be hamstrung if it were tied down to technical concepts of local law."

38. In ratifying the Commission's long standing view with respect to the Section 7 obligation to continue service, the Supreme Court, in Sunray, supra, rationalized that producers, and pipelines, would otherwise be free to insist on the inclusion in their certificates of provisions relieving them in advance of their obligations to continue service, thereby nullifying or seriously limiting the Commission's power to authorize abandonment under subsection (b). Such rationalization is applicable to the present situation because the 1967 Lease contains the following provision which, in its substance, is universal or almost universal in the natural gas industry:

> If operations for the drilling of a well for oil or gas are not commenced on said land on or before the 26th day of September, 1968, this lease shall terminate as to both parties, unless the lessee shall on or before said date pay or tender to the lessor * * * the sum of [$160] which shall operate as a rental and cover the privilege of deferring the commencement of operations for drilling for a period of one year. In like manner and upon like payments or tenders, the commencement of operations for drilling may further be deferred for like periods successively.

It is obvious that if Amarex were to prevail, any producer with such a provision in an oil and gas lease could simply fail to make the next payment and thereby permit the lease to lapse within the year free of the prior commitment of the underlying gas to interstate service. And the producer might obtain a new lease of the acreage prior to that time and sell the production from or attributable to that new lease in intrastate commerce, thereby withdrawing dedicated gas from interstate commerce.

39. In rationalizing Sunray, supra, the Supreme Court also relied on the ratemaking scheme of the Natural Gas Act wherein a producer (or any other natural gas company) can file an initial rate under Section 4(c) subject to prospective change following an investigation under Section 5 and a finding that the rate is unjust and unreasonable. But the producer must file a rate change under Section 4(d), subject to suspension and refund following an investigation under Section 4(e) and scrutinization under the "just and reasonable" standard. If Amarex were to prevail, all producers in its shoes would be in a position to withdraw dedicated gas from interstate service and rededicate it to the same or a different interstate customer if they could thereby obtain a higher price for the gas, and in doing so they could file new rates subject only to prospective change while escaping rate change scrutinization under the "just and reasonable" standard and a possible refund obligation. Or they might sell the gas at a higher rate in the intrastate market. The current "Contract Price Schedule" under the 1970 Gas Purchase Contract is $.21 per Mcf, subject to Btu and tax adjustments, and subject to any higher "just and reasonable" area rates prescribed by the Commission. Under the national rate prescribed by Opinion No. 770 issued July 27, 1976, the current maximum rate applicable to gas produced from the Cupp C No. 1 Well is $1.42 per Mcf, subject to adjustments.[22]

40. We find, therefore, that the considerations leading to the Supreme Court's decision in Sunray are equally applicable to the present situation. When natural gas reserves underlying acreage which is described in numerous oil and gas leases are dedicated to interstate commerce as part of the same gas purchase contract, as in the case of the reserves underlying the acreage described in the Exhibit A leases and mineral interests, limitations of capital, equipment and manpower naturally limit a producer's ability to bring all of the reserves into production immediately. And priority will naturally be given to the most likely prospects for returning profits. The simultaneous dedication of numerous reserves envisions a flow which will begin with a single well, enlarge as new wells are brought into production and gradually diminish as the wells age and abandonment is authorized. And effective administration of the Natural Gas Act requires continuous Federal control over those reserves from the moment of their dedication to the moment of their authorized abandonment, whether or not they are producing natural gas at any particular intervening point in time.

41. Section 7(b) of the Natural Gas Act requires the Commission's permission and approval for abandonments of facilities and service and, conversely, prohibits abandonments through the unilateral decisions of particular producers based upon the economic considerations affecting them. Economic decisions to rework natural gas wells in reservoirs which are currently producing or which have produced in the past are naturally interlocked in priority with similar decisions to drill new wells into reservoirs which have never produced. Accordingly, once a natural gas service is initiated under a gas purchase contract (as was done herein on November 4, 1971, under the 1970 Gas Purchase Contract), none of the reservoirs which are thereby "dedicated" to that service may be withdrawn therefrom on the basis of a producer's unilateral decision to drill a particular well at one site ahead of some other well at another site and before the expiration of the primary term of an oil and gas lease for that other site. See the Commission's Order Determining Gas Dedication issued September 29, 1976, in *Northern Natural Gas Company* v. *Crawford*, Docket No. CS71-6, and its Order on Rehearing issued December 1, 1976.[23]

42. Although Amarex contends that the obligation under Section 7 of the Natural Gas Act to continue the service would invade the integrity of State recording acts as being in the nature of an unrecorded encumbrance, we find that Amarex was advised of its Section 7 obligation in a title opinion issued in connection with the 1972 Lease even though apparently only the 1967 Lease had been recorded:[24]

> By instrument dated June 6, 1970, Amarex, Inc. and Arkansas Louisiana Gas Company entered into a gas purchase contract covering the lease under consideration. The terms and conditions of the contract are not set forth in the instrument of record, but you are advised that any gas produced from the premises is subject to said contract.

And we find that the Section 7 obligation does not violate the public policy against perpetuities, as Amarex contends, because the obligation vests upon the initiation of the interstate service pursuant to the certificate.

Beneficiaries of certificated service might wish to consider recording copies of gas purchase contracts, as well as the underlying oil and gas leases, and Com-

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[22] Helmerich & Payne, Inc., the operator of the Cupp C No. 1 Well, informed a member of the staff on May 14, 1976, that the interstate sale to Michigan-Wisconsin Pipe Line Company was being made at the national rate and that the intrastate sale to Oklahoma Natural Gas Company was being made at a rate of $1.68 per Mcf. While such information comes from a reliable source, it is not part of the record in this proceeding and has not been relied upon in reaching our decision. Assuming its truth, however, it is obvious that Amarex would prefer to sell its share of the gas to Oklahoma Natural Gas Company at the intrastate rate of $1.68 per Mcf instead of Arkla at the interstate rate of $1.42 per Mcf.

[23] Appeal pending in the United States Court of Appeals for the Fifth Circuit sub nom *Harrison* v. *Federal Power Commission*, No. 76-4318.

[24] The opinion is dated May 17, 1972, more than three years before the issuance of the Commission's Opinion No. 737 in El Paso, supra.

mission orders issuing certificates of public convenience and necessity, so that any prospective transferee of an interest in the affected real estate may be advised of the Section 7 obligation upon a proper title search.

THE MOTION FOR INTERIM RELIEF

43. On May 3, 1976, Amarex filed a motion seeking an order which would permit it to sell the natural gas in question to Arkla pendente lite under the 1970 Gas Purchase Contract, provided (1) such as a sale pendente lite would not be an admission that the gas is covered by the contract or dedicated to Arkla in interstate commerce, (2) such a sale pendente lite would not operate as a dedication of the gas to interstate commerce and (3) Arkla would repay the gas in kind in the event that Amarex ultimately prevails. In other words, Amarex would sell the gas to Arkla under the terms of the 1970 Gas Purchase Contract so long as the status quo was maintained pending the outcome of this consolidated proceeding, Arkla, on May 17, 1976, filed an answer opposing the motion on the ground that the gas in question is dedicated to it under the 1970 Gas Purchase Contract and that it does not favor an interim arrangement with a repayment provision in view of its short supply. The Commission, as part of its order of July 15, 1976, denied Amarex's motion, and Amarex, on August 10, 1976, filed an application pursuant to Section 19(a) of the Natural Gas Act and § 1.34 of the Commission's Rules of Practice and Procedure for rehearing of so much of that order as denied its motion to permit it to sell the gas to Arkla pendente lite. Thereafter, the Commission, by order issued September 9, 1976, granted rehearing for the purpose of further consideration.

44. Arkla refuses to purchase the gas from Amarex principally on the ground that it is opposed to a repayment requirement in the event of an ultimate determination that Arkla is not entitled to the gas, and it requests that it not be ordered to purchase the gas from Amarex. Amarex, on the other hand, has not asked for an order directing Arkla to purchase the gas, but only one permitting Amarex to sell the gas to Arkla while maintaining the status quo pendente lite. The Commission finds however, that Amarex's motion and application for rehearing are rendered moot by the action herein.

The Commission further finds: The interest of Amarex, Inc. in the natural gas which is produced from or attributable to the Southeast Quarter in Section 22, Township 10N, Range 26W, Beckham County, Oklahoma, is committed to Arkansas Louisiana Gas Company for interstate sale for resale, by the small producer certificate of public convenience and necessity which was issued to Amarex, Inc., in Docket No. CS71-92 by the Commission's order in that docket of August 12, 1971, and by the subsequent initiation of natural gas service under the Gas Purchase Contract dated June 6, 1970, and the natural gas which is so committed cannot be withdrawn from such interstate service without the permission and approval of the Commission first had and obtained pursuant to Section 7(b) of the Natural Gas Act.

The Commission orders: Commencing not later than sixty (60) days from the date of this opinion and order, Amarex, Inc., shall deliver or cause to be delivered to Arkansas Louisiana Gas Company, and Arkansas Louisiana Gas Company shall receive and take from Amarex, Inc., so much of the natural gas produced from the Helmerich & Payne Cupp "C" No. 1 Well, Beckham County, Oklahoma, from the completion thereof as a commercial producer of natural gas on August 21, 1975, forward, as is sold by Amarex, Inc., to Arkansas Louisiana Gas Company pursuant to the terms of the Gas Purchase Contract between them dated June 6, 1970.

By the Commission.[*]

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13990 Filed 5-16-77;8:45 am]

[Docket No. RP76-13]

CITIES SERVICE GAS CO.

Order Approving Settlement Agreement

MAY 10, 1977.

On September 22, 1975, Cities Service Gas Company (Cities) filed with the Commission Thirteenth Revised Sheet PGA-1 to Second Revised Volume No. 1 of its FPC Gas Tariff to reflect an increase in jurisdictional revenues of $20,175,304 for the test period (the twelve months ended May 31, 1975, adjusted for known and measurable changes through February 29, 1976). By its order issued October 22, 1975, the Commission accepted Thirteenth Revised Sheet PGA-1 and suspended the effectiveness thereof until March 23, 1976. The Base Tariff Rates on Thirteenth Revised Sheet PGA-1 reflected an average cost of purchased gas of 25.25 cents per Mcf as reflected on Substitute Second Revised Sheet No. 37D which was made effective as of April 23, 1975, without condition or refund obligation by the Commission's order issued September 13, 1976, in Docket No. RP75-27.

On February 23, 1976, Cities filed Alternate Substitute Thirteenth Revised Sheet PGA-1 and Third Revised Sheet No. 37D to reflect an average cost of purchased gas of 35.67 cents per Mcf previously filed pursuant to its PGA provision. There are no gas costs imbedded in the 35.67 cents per Mcf which are subject to refund pending hearing. By letter order dated April 1, 1976, these revised sheets were accepted, effective March 23, 1976, in lieu of the tariff sheet originally filed in this proceeding, with the rates subject to refund and any orders issued in Docket No. RP76-13.

In June, 1976, the Commission's Staff served its top sheets for settlement purposes and settlement conferences were held during June, September and October, 1976. During these conferences, the parties, including the Commission's Staff, reached the agreement reflected in Stipulation and Agreement (Stipulation) for the settlement of Docket No. RP76-13, with certain issues contingent upon the outcome of other pending Commission proceedings, and subject to the understanding that certain intervenors reserved the right to file comments objecting to certain aspects of the settlement[1] and the other parties reserved the right to file reply comments thereto.

On July 23, 1976, Cities tendered for filing further revisions to the subject tariff, requesting an effective date of August 23, 1976. The Comission by its order issued August 19, 1976, in Docket No. RP76-135 rejected the filing in part and accepted it in part, suspended the major part of the filing for five months, so as to be effective January 23, 1977, subject to refund and set the matter for hearing. As a result of these filings and the Commission's order, the proposed Stipulation and Agreement is for a locked-in period.

On December 6, 1976, the City Group Gas Defense Association, and the Kansas Municipal Intervenors, filed comments in opposition to the proposed Stipulation. On December 27, 1976, Cities filed reply comments in support of the Stipulation.

The City Group Gas Defense Association, and the City of Springfield, Missouri and the Board of Public Utilities of Springfield, Missouri, (City Group) takes issue with the settlement rate of return of 10.15%. City Group points out that in Docket No. RP75-27, the Commission approved a settlement overall rate of return computation of 9.47%, yielding a return on common equity of 10.00%. The City Group goes on to argue that the short interval since the September 13, 1976, overall rate of computation, plus the fact that the proposed settlement is based on "top sheets", plus the fact that in Opinion No. 547, 40 FPC 1033 (1968) the Commission found that the unusual capitalization of Cities indicates the need for a much lower return on equity than that of more conventionally financed companies; all show a lack of justification for the rate of return of 10.15% contained in the proposed stipulation. While the unusual capitalization of Cities persists and merits the Commission's consideration, particularly in future rate cases, we cannot say that the rate of return provided by the instant settlement for a locked-in period is inconsistent with our decisions in the two previous dockets, or do not adequately take into consideration the capitalization factor. Further, so much time has elapsed since

[*] Commissioner Watt's dissenting statement filed as part of the original document.

[1] Kansas Municipal Intervenors (City of Abbyville, Kansas, *et al.*), The City of Springfield, Missouri, and Board of Utilities of Springfield, Missouri, and City Group Gas Defense Association reserve the right to object to the rate of return on equity and the resulting overall rate of return. The Kansas Municipal Intervenors further reserved the right to comment upon the matter of cost classification, allocation and rate design.

our Opinion 547, in 1968, as to make that Opinion of limited utility in evaluating the correctness of the rate of return provided for in the proposed stipulation.

The Cities of Abbyville, Kansas, et al. and the Kansas Municipal Utilities (Kansas Cities) oppose the stipulation insofar as it adopts the 50–50 Seaboard formula for cost classification, cost allocation and rate design, and asks that the Commission order that the proper cost classification, cost allocation and rate design shall be governed by the Commission's final and nonappealable order on this issue in Docket No. RP74–4. Staff in its comments does not oppose adoption of the Seaboard method but "emphasizes that its support of the method of cost classification, allocation and rate design herein is limited solely to the resolution of those issues in this proceeding." We concur with Staff's view on this issue and will approve the settlement as being, on balance, just and reasonable, for the purposes of the locked-in period which it covers. Our order of February 2, 1976, in Docket No. RP74–4 in ordering paragraph (B) thereof provided as follows:

"(B) The Commission's determination of the issues of classification, allocation and rate design shall take effect prospectively from the date of the Commission's order with respect to reserved issues herein. However, *if Cities files a general rate change after the date of this order,* the Commission's determination shall take effect the date the new rates go into effect or the date of the order on the reserved issues, whichever is sooner." (Emphasis added).

As is indicated in Article I of the settlement, the above quoted provision of our order of February 2, 1976, in Docket No. RP74–4, provides that any change in cost classification, allocation or rate design will have prospective application only until the first general rate change filed by Cities Service after February 2, 1976, in this case the general rate change filed which was made the subject of our August 19, 1976, order in Docket No. RP76–135, supra.

The stipulation and agreement in summary, provides as follows:

Article I identifies the cost of service underlying the agreement. The cost of service is set forth in Appendix A to the agreement and to this order and is predicated on the test period consisting of the 12 months ended May 31, 1975, adjusted for known and measurable changes through February 29, 1976.

Article II discusses refunds and provides that for the locked-in period covered by the stipulation Cities Service shall refund to each of its jurisdictional customers, an amount determined on the basis of each customers' billing determinants for that period and the difference between Cities Service rates as originally filed in this proceeding and set forth in Appendix D of the settlement, and Appendix B to this order.

Article III concerns contingent issues and refunds. Section 1 of Article III provides that the issue as to the proper rate treatment of unrecovered purchased gas costs is a reserved issue pending decision in Docket No. RP74–4, and that the inclusion of this amount for unrecovered purchased gas costs shall be allowed to the extent permitted by a final order in Docket No. RP74–4. Section 2, provides that the inclusion of $700,000 in rate base for an advanced payment to Belco Petroleum Corporation, shall be allowed to the extent permitted by a final order on either Cities Service's application for rehearing or appeal relating to Docket Nos. R–411 and RM74–4 or its petition for a declaratory order in Docket No. RP76–85.[2]

Section 3 deals with the proper rate treatment of expenditures by Northern Natural Gas Company and by British Gas Corporation to develop a coal slagging gasifier to produce synthetic gas. The issue of proper rate treatment for the described research and development project is pending decision in Docket No. RP72–127 and R&D 75–1. Section 3 of Article III, provides that the inclusion of expenditures for this project shall be allowed to the extent permitted by a final Commission order in the above cited dockets.

Section 4 provides that the inclusion in settlement cost of service in Appendix A of sums for geophysical research expenditures in the Mid-Continent and Rocky Mountain areas are reserved issues in Docket No. RP74–4 and shall be allowed to the extent permitted by final order in that docket.

Section 5 provides for refunds to Cities Service's jurisdictional customers in the event any of the sums described in Sections 1 through 4 of Article III are not allowed as a result of final Commission orders in other pending dockets.

Article IV provides that the Commission's order approving the Stipulation shall constitute final authorization for Cities Service to utilize during the locked-in period covered by the stipulation book depreciation rates of 5.10 percent for gathering and products extraction plant, 3.60 percent for transmission plant and 3.15 percent for storage plant, and to revise depreciation accruals previously recorded for such plant for that period at a composite book depreciation rate of 4.45 percent to reflect such revised depreciation rates.

Article V provides that the Stipulation is effective pursuant to Article IX.

Article VI requires the submission to the Commission of a report of the distribution of refunds to its customers and a copy of such report to its affected jurisdictional customers, interested state commissions and all parties to Docket No. RP76–13.

Article VII provides that nothing in the Stipulation shall either diminish or enlarge the obligations of Cities Service.

Article VIII concerns the reserve for deferred income taxes deducted from the rate base.

Article IX provides that the Stipulation shall become effective only after it has been approved by a final and nonappealable Commission order, that the Commission order shall constitute elimination of any condition or refund obligation with regard to Third Revised Sheet No. 37D, which was accepted, effective as of March 23, 1976, and shall terminate the proceedings in Docket No. RP76–13, except as to contingent issues described in Article III.

Article X, Reservations, provide that the Stipulation represents a settlement only for Docket No. RP76–13 and will not bind any party, including the Commission in a future determination of any issue in any future proceeding.

The Commission further finds: The proposed stipulation and agreement the subject of Commission notice of filing of Stipulation and Agreement dated November 16, 1976, is reasonable and proper and in the public interest. Accordingly, it is approved as hereinafter ordered.

The Commission orders: (A) The stipulation and agreement noticed on November 16, 1976, is incorporated herein by reference, and is hereby accepted and approved.

(B) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its staff, Cities or by any other party or person affected by this order in any proceeding now pending or hereinafter instituted by or against Cities or any other person or party.

(C) The secretary shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[2] On October 26, 1976, the Commission issued a declaratory order in Docket No. RP76–85 denying rate base treatment for certain advances and granting intervention.

APPENDIX A

Cities Service Gas Co., Docket No. RP76-13—Settlement cost of service 12 months ended May 31, 1975, adjusted

[Amounts in dollars]

Line No.	Description	Total	Gas supply	Gathering	Products extraction	Storage	Transmission
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Operation and Maintenance:						
1	Gas purchased	108,940,115	108,940,115				
2	Gas stored underground, net	(631,250)	(631,250)				
3	Gas used by company	(4,103,881)	(4,103,881)				
4	Other gas supply expenses	2,222,219	365,940	$1,856,279			
5	Gathering expenses	4,064,597		4,064,597			
6	Products extraction expenses	324,293			$324,293		
7	Underground storage expenses	1,854,137				1,854,137	
8	Transmission expenses	13,038,256					13,038,256
9	Customer accounts expenses	643,966		643,966			
10	Sales expenses	201,036		201,036			
11	Administrative and general expenses	9,607,426		2,703,530	54,762	614,875	6,234,259
12	Total operation and maintenance	136,160,914	104,570,924	9,469,408	379,055	2,469,012	19,272,515
13	Depreciation expense	14,164,962		3,953,829	49,927	791,901	9,369,305
14	Amortization expense	46,839		7,588	167	2,378	36,706
15	Taxes other than income taxes	6,566,183		1,434,312	19,580	550,507	4,575,776
16	State income taxes	2,601,467	211,900	608,220	5,015	242,936	1,533,376
17	Federal income tax	24,539,593	1,998,853	5,737,328	47,303	2,291,797	14,464,312
18	Return	22,611,224	2,643,882	4,660,251	49,083	2,464,536	12,793,472
19	Other gas revenues, credit	(1,219,207)	(16,424)	(4,372)	(1,022,340)	(8,006)	(98,055)
20	Subtotal	205,471,975	109,409,135	25,866,564	(542,204)	8,791,061	61,947,229
21	Transfer between functions		(542,204)		542,204		
22	Total cost of service	205,471,975	108,866,931	25,866,564		8,791,061	61,947,229

APPENDIX B

Cities Service Gas Co., Docket No. RP76-13—Test period jurisdictional sales volumes and revenues at settlement base tariff rates

Rate schedule	Test period volume Mcf 14.65 No.	Settlement base tariff rates	Revenue at settlement base tariff rates
(1)	(2)	(3)	(4)
F-1:			
Base	12,032,967	47.84¢	$5,756,571
Excess	20,620,924	57.84	11,927,142
Total F-1	32,653,891	54.15¢	17,683,713
F-2:			
Base	56,581,713	56.20¢	31,798,923
Excess	101,027,452	66.20	66,880,173
Total F-2	157,609,165	62.61¢	98,679,096
C-1	1,739,734	44.60¢	775,921
C-2	14,767,304	50.60	7,472,256
I-1	4,705,970	41.10	1,934,154
I-2	64,515,943	45.10	29,096,690
LVS-2	1,353,824	45.10	610,575
P:			
Demand	(393,674)	$1.00	393,674
Commodity	11,963,412	40.60¢	4,857,145
Excess		75.00	
Total P	11,963,412	43.89¢	5,250,819
IRG-1:			
Monthly Charge	(48)	$50.00	2,400
Commodity	185,148	49.00¢	90,723
Total IRG-1	185,148		93,123
E			
Monthly Charge	(24)	$50.00	1,200
Commodity	9,152	75.00¢	6,864
Total E	9,152	88.11¢	8,064
Total jurisdictional	289,503,543		161,604,411

[FR Doc.77-13988 Filed 5-16-77;8:45 am]

[Docket No. RM74-16]

NATURAL GAS COMPANIES ANNUAL REPORT OF PROVED DOMESTIC GAS RESERVES: FPC FORM NO. 40

Order Deferring Action on Motion To Compel Production of Staff Witness for Cross-Examination and Affirming Judge in Denying Motions To Strike

MAY 6, 1977.

There are involved here an oral motion by Tenneco Oil Company at the hearing held on April 4, 1977, that the Staff be required to make a witness available for cross-examination on comments submitted by the staff and a written motion by Tenneco filed April 8, 1977, requesting the Commission to tender Staff member Gordon K Zareski for this purpose. Staff filed a response to the written motion on April 18, 1977. At the same hearing there were also motions (1) that staff comments be stricken unless staff were required to present witnesses, (2) that if the staff comments were stricken, comments of the producers should be stricken for the reason that the producers did not present witnesses in support of their comments, and (3) that the comments presented by non-producers be stricken for the same reason.

This proceeding commenced with the issue on April 15, 1974, of a Notice of Proposed Rulemaking proposing to require each natural gas company to file an annual report of proved domestic gas reserves on a new FPC Form No. 40. After the filing of comments and a public conference the Commission on February 25, 1975, issued Order No. 526, and later on rehearing, Order No. 526-A, which established a reporting system to provide it with information on the nation's proved reserves of natural gas. However, by orders of October 15, 1975, and June 2, 1976, the United States Court of Appeals in *Union Oil Company of California et al.* v. *F.P.C.*, — F. 2d — (CA9—No. 75-2891 *et al.*) set aside Order Nos. 526 and 526-A and remanded the proceeding to the Commission because the court was not able to determine that the Commission's orders were supported by substantial evidence.

By order of February 2, 1977, the Commission reopened the proceeding, it required the staff to serve written comments on all parties concerning the regulatory need for gas reservoir data, the availability of this data from other government agencies and the regulatory burden of submitting reservoir data; it provided opportunity for the filing of comments, testimony and exhibits, and prescribed a hearing.

A substantial number of written comments were filed and a hearing was held on April 4, 1977, before Presiding Administrative Law Judge Samuel Kanell. There witnesses were presented and cross-examined and their testimony was made part of the record, as were the comments. The oral motions referred to above were then made.

The motions were denied at the hearing because the Staff submission was made in compliance with the procedures prescribed by the Commission in its February 2, 1977 order and because the Commission's Rules (Section 1.19(a)) do not require evidentiary submissions through intervenors in rulemaking proceedings. Certification of his rulings to the Commission was made by the Judge on April 14, 1977.

Meanwhile on April 8, 1977, Tenneco filed its written motion with the Commission to compel production of Gordon Zareski for cross-examination. Tenneco argues that until all interested parties have an opportunity to explore through cross-examination the statements in staff's comments there will be no substantial evidence in the record to support reissuance of Form 40 and to satisfy the legal burden imposed by the Court of Appeals. In its response filed April 18, 1977, the staff contends that Tenneco is making a collateral attack on the Commission's order. Further, staff says, Tenneco's assertion that the staff's filing is not substantial evidence is not only false but would require the Commission to prejudge the remanded case on the basis of a motion. Also staff asserts the motion attempts to permit Tenneco to make its case through cross-examination without presenting an affirmative case.

It is clear that in a rulemaking proceeding information need not be submitted in the form of evidence in an adjudicative proceeding. The Court recognizes this, but concludes that under the Natural Gas Act, the record must contain sufficient factual data, however informally presented, to provide substantial evidentiary support for the ac-

tion taken. Whether the record including the staff's comments, the other comments, the testimony of the three witnesses and the cross-examination contains substantial evidence to support the issuance of Form 40 can only be determined by the Commission upon a full review of the record. If further evidence is necessary to support the Commission's action, the Commission will call for further proceedings. Therefore action on Tenneco's written motion and corresponding oral motion calling for staff witnesses should be deferred pending decision on the whole record. The motions to strike the staff comments and the comments of other parties should be denied on the ground that they form part of the body of evidence in this type of proceeding. *American Airlines, Inc.* v. *C.A.B.* 359 F.2d. 624, 632–633 (CADC–1966), Certiorari denied 385 U.S. 843 (1966).

The Commission further finds: (1) Tenneco's oral motion to require the staff to make a witness available for cross-examination on the comments submitted by the staff and the motions to strike listed above have been certified to the Commission.

(2) Commission ruling on the oral and written motions to require the staff to make witnesses available should be deferred; the motions to strike should be denied.

The Commission orders: (A) Commission ruling on the oral and written motions to require the staff to make witnesses available for cross-examination on the comments submitted by the staff is deferred pending a determination on the whole record in the reopened proceeding.

(B) The remaining oral motions consisting of motions to strike are denied.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13987 Filed 5-16-77;8:45 am]

[Docket No. CP73-332]

NORTHWEST PIPELINE CORP.

Findings and Order Further Amending Order Authorizing Importation of Natural Gas

MAY 10, 1977.

On December 23, 1976, Northwest Pipeline Corporation filed in Docket No. CP73-332 a petition to amend the Commission's order issued in Docket No. CP73-332 on February 26, 1975 (54 FPC—), pursuant to Section 3 of the Natural Gas Act so as to authorize the continued importation of short-term emergency natural gas from Canada at a cumulative average price up to $2.05 per Mcf in lieu of the previously authorized price of up to $1.91 per Mcf. Northwest also requests that the Commission remove Docket No. CP73-332 from the scope of the import authorization pricing orders issued September 9, 1976, and December 17, 1976, in Docket No. CP66-110, et al. The details of Northwest's proposal are more fully set forth in the petition to amend.

On February 26, 1975, the Commission issued an order in Docket No. CP73-332 adopting and modifying the Initial Decision of the Administrative Law Judge whereby Northwest was authorized to import from Canada up to 55,000 Mcf of short-term emergency natural gas per day purchased from Westcoast Transmission Company Limited (Westcoast) under the terms of a 1974 Temporary Agreement at an average border price ranging from $1.61 to $1.91 per Mcf over the life of the contract.[1] The 55,000 Mcf of gas per day partially offsets curtailments of heating season deliveries by Westcoast to Northwest. The subject volumes of gas are purchased by Westcoast from Pan-Alberta Gas Ltd. (Pan-Alberta) in Alberta, Canada, and are delivered to Westcoast by Pan-Alberta in British Columbia, Canada. Westcoast then transports and delivers such gas to Northwest at the Sumas import point on the international boundary. These emergency volumes are available for purchase by Northwest only to the extent Westcoast is unable to deliver gas under the Fourth Service Agreement.[2] Under the terms of the 1974 Temporary Agreement, Northwest is required to take or pay for a minimum annual volume which is equivalent to an 85 percent load factor.

In its order of February 26, 1975, the Commission found that the border price of the gas would, on the average, range between $1.61 and $1.91 per Mcf over the life of the contract subject to adjustments occasioned by the Canadian-U.S. exchange rate and Northwest's carrying costs on certain facilities to be constructed. The order requires Northwest to seek further authorization to continue importing gas under the 1974 Temporary Agreement if the border price rises above $1.91 per Mcf, on the average, over the life of the contract.

On October 8, 1974, Westcoast's Export License GL-41 was amended by the National Energy Board of Canada (NEB) to permit the exemption of the subject volumes of gas from the general pricing provisions affecting Canadian natural gas exports. By Order No. AO-11-GL-41, however, the NEB revoked this exemption and made the subject volumes of gas subject to the general border prices of $1.80 per million Btu effective October 1, 1976, and $1.94 per million Btu, effective January 1, 1977. By Commission orders issued in Docket No. CP66-110, et al., on September 9, 1976 (56 FPC __), and December 17, 1976, (56 FPC __), Northwest was authorized to pay the increased prices. On October 21, 1976, the NEB issued an order which reinstated the border price exemption for gas imported under the 1974 Temporary Agreement.

The average border price ranging between $1.61 and $1.91 per Mcf authorized by the order of February 26, 1975, was dependent upon Pan-Alberta's ability to sell the gas to other parties at the contractual commodity rate during the summer months when the gas could not be used by Northwest and, thus, offset to some degree the 85 percent take-or-pay obligation of Northwest. The high of $1.91 per Mcf represents the inability of Pan-Alberta to dispose of any gas, while the low of $1.61 represents its ability to sell all of the gas in Canada. Pan-Alberta was unable to sell any of the gas in Canada during the summer months to offset the take-or-pay obligation of Northwest. Further, Pan-Alberta was unable to deliver the full contractual volumes during the 1975–1976 heating season. Despite this, Northwest was still obligated to pay the fixed cost of the added transportation facilities of both Pan-Alberta and Westcoast. In view of the fact that it was unable to deliver full contract quantities during the 1975–1976 heating season, Pan-Alberta agreed to reduce its other charges to the extent required so that the total amount due Pan-Alberta and Westcoast over the term of the 1974 Temporary Agreement would not exceed $1.91 per Mcf, assuming that full volumes are delivered for the period October 1, 1976, through April 1, 1977. Despite this agreement, Northwest was unable to import full volumes in October because Westcoast had gas available on certain days under its GL-41 export authorization at the Sumas delivery point.

Northwest now estimates that the average cost of all volumes actually imported for the term of the 1974 Temporary Agreement will be $1.96 per Mcf if full deliveries can be taken during the remaining months of the agreement. However, Northwest states that it is impossible to predict with certainty the volumes that will finally be imported under the agreement. Northwest estimates that if, for example, it were unable to take gas for an additional 15 days during the remaining four months of the agreement (from the time of filing of the instant petition), the cumulative purchased gas cost would be $2.05 per Mcf.

Based on the foregoing facts, Northwest's average cumulative gas purchased cost will exceed the restriction of $1.91 imposed in the Commission order of February 26, 1975. The extent by which the $1.91 will be exceeded cannot be determined until after the agreement expires on April 30, 1977, because deliveries under the 1974 Temporary Agreement are subject to the uncertainty of Westcoast's inability to deliver gas from its own gas supply sources in British Columbia. In any event, the final average cumulative gas purchased cost is beyond the control of Northwest and, upon consideration of the various factors contributing to the average increased purchased cost, the request to raise the $1.91 per Mcf restriction to $2.05 per Mcf seems to be reasonable.

The 1974 Temporary Agreement contains a provision that if, at the end of the agreement, certain conditions are met, Northwest and Westcoast shall attempt to negotiate an extension of said agreement. Therefore, it should be noted that the bases for the determination of

[1] The Temporary Agreement will end on April 30, 1977.

[2] Northwest was authorized in Docket No. CP73-332 to import up to 800,000 Mcf pursuant to the Fourth Service Agreement dated October 1, 1970. Northwest is now authorized in Docket No. CP75-341 to import said gas.

the instant proposal relate only to the subject 1974 Temporary Agreement and any application related to the proposed extension of this agreement will be considered on its own merits.

After due notice by publication in the FEDERAL REGISTER on January 24, 1977 (42 FR 4205), no petition to intervene, notice of intervention or protest to the granting of the petition to amend has been filed.

The Commission finds: It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and not inconsistent with the public interest to amend further the order issued in Docket No. CP73-332 on February 26, 1975, as amended, as hereinbefore described and as more fully described in the petition to amend in this proceeding.

The Commission orders: (A) The Commission's order issued in Docket No. CP73-332 on February 26, 1975, as amended, is further amended so as to authorize Northwest to pay an average price up to $2.05 per Mcf over the life of the contract, as hereinbefore described and as more fully described in the petition to amend in this proceeding. In all other respects said order, as amended, shall remain in full force and effect.

(B) The authorization granted herein is effective as of September 10, 1976.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-13986 Filed 5-16-77;8:45 am]

[Docket No. CP76-118]

U-T OFFSHORE SYSTEM

Notice of Further Extension of Time

MAY 9, 1977.

On April 19, 1977, U-T Offshore System filed a motion for a further extension of time to submit the rate schedules and cost of service studies pursuant to Ordering Paragraph (B) of the Commission's January 13, 1977 order.

Upon consideration, notice is hereby given that a further extension of time is granted to and including July 5, 1977.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-13989 Filed 5-16-77;8:45 am]

FEDERAL RESERVE SYSTEM

ALABAMA BANCORP.

Order Approving Acquisition of Bank

Alabama Bancorporation, Birmingham, Alabama, a bank holding company within the meaning of the Bank Holding Company Act ("Act"), has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares, less directors' qualifying shares, of the successor by merger to The Farmers & Merchants Bank, Ashford, Alabama ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with § 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the largest banking organization in Alabama, controls 14 bank subsidiaries with aggregate deposits of approximately $1.4 billion representing 15.1 per cent of total deposits in commercial banks in Alabama.[1] Acquisition of Bank (approximately $8.7 million in deposits) would increase Applicant's share of Statewide commercial bank deposits by less than 0.1 per cent and would have no appreciable effect upon the concentration of banking resources in the State.

Bank is the fifth largest of eight banks in the Dothan banking market, which is the relevant banking market,[2] and controls approximately 3.4 percent of the total deposits in commercial banks in the market. Applicant's subsidiary bank closest to Bank is located in Montgomery, approximately 100 miles from Bank, in a separate banking market. Applicant does have a nonbanking subsidiary that competes in the Dothan market with Bank and ten other firms for the origination of single-family residential mortgage loans within the market. However, Bank originated only $300 thousand in such loans during 1976, amounting to approximately 1.3 per cent of the amount of single-family residential mortgage loans originated in the market during the year. Thus, it appears that approval of this application will not eliminate a substantial amount of competition. It is concluded that consummation of the proposal would have only slightly adverse competitive effects.

The financial and managerial resources and future prospects of Applicant, its subsidiaries, and Bank are regarded as generally satisfactory and consistent with approval of the application. Considerations relating to banking factors are also consistent with approval of the application. Customers of Bank will have access to the services of Applicant's investment, bond, trust, industrial development, and international departments. Thus, considerations relating to the convenience and needs of the community to be served lend weight toward approval of the application, and in the Board's view outweigh any slightly adverse effects on competition that might result from consummation of this proposal. Accordingly, it is the Board's judgment that the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[3] effective May 11, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-14014 Filed 5-16-77;8:45 am]

[1] All banking data are as of June 30, 1976, except as otherwise indicated.

[2] The Dothan banking market is approximated by the boundaries of Houston County.

EUROPEAN-AMERICAN BANCORP

Order Approving Formation of Bank Holding Company and Operation of New York Investment Company

European-American Bancorp, New York, New York, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of the formation of a bank holding company through the acquisition of all the voting shares (except directors' qualifying shares) of European-American Bank & Trust Company ("Bank"), New York, New York.

Applicant has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire all of the voting shares (except directors' qualifying shares and 130 additional shares) of European-American Banking Corporation ("EABC"), New York, New York. EABC is an investment company organized and operating under Article XII of New York State Banking Law[1] (a "New York Investment Company") that engages in the following activities: provision of lending and international banking services, including letters of credit, acceptances and other financing facilities in connection with exports and imports, international transfers of funds and foreign exchange services; investments and foreign exchange transactions for its own account; leasing improved real estate and data processing equipment; and maintenance of credit balances incidental to or related to the foregoing activities. Although Applicant believes that certain of EABC's activities have been determined by the Board in § 225.4(a)(1), (3), and (6) of Regulation Y to be permissible for bank holding companies, it has not applied to acquire shares of EABC on the basis of those provisions. Rather, based on the facts and circumstances of this particular case, Applicant has requested under § 225.4(a) of Regulation Y that the

[3] Voting for this action: Vice Chairman Gardner and Governors Wallich, Coldwell, Partee, and Lilly. Absent and not voting: Chairman Burns and Governor Jackson.

[1] See New York Banking Law sections 507-519, 4 McKinney's Consolidated Laws (1976).

Board determine by specific Order under section 4(c)(8) of the Act that its operation of EABC as a New York Investment Company is permissible under section 4(c)(8) of the Act because EABC is engaged in activities so closely related to banking or managing or controlling banks as to be proper incidents thereto.[3] Operation of a New York Investment Company has not heretofore been determined by the Board to be an activity permissible for bank holding companies.

Notice of receipt of these applications has been given in accordance with sections 3 and 4 of the Act (41 FR 49673) and the time for filing views and comments has expired. The Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)), and the considerations specified in section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)). No request for a hearing has been received.

Applicant is a nonoperating corporation organized for the purposes of becoming a bank holding company through the acquisition of Bank and of operating a New York Investment Company through the acquisition of EABC. Bank was chartered in 1953 as the Belgium-American Bank and Trust Company, with the Societe Generale de Banque, S.A., Brussels, Belgium as the sole shareholder. In 1968 the Midland Bank, Limited, London, England; Deutsche Bank A.G., Frankfurt, Germany; and Amsterdam-Rotterdam Bank, N.V., Amsterdam, The Netherlands, joined as shareholders, and Bank adopted its present corporate title. Shortly afterwards, Societe Generale, Paris, France, and Creditanstalt Bankverein, Vienna, Austria, also became shareholders of Bank. Bank had two branches in Manhattan and a limited service branch in the Cayman Islands until October 1974, when it acquired from the Federal Deposit Insurance Corporation ("FDIC") the deposits, selected assets, and a network of 100 branches of Franklin National Bank ("Franklin"), Brooklyn, New York. Prior to the Franklin transaction, Bank operated principally as a wholesale bank, serving primarily European companies in the American market and selected U.S. companies. Through the purchase of $1.6 billion of Franklin's assets, Bank became a major retail bank in the Metropolitan New York market,[3] with most of its operations concentrated on Long Island. Bank ($2.2 billion in domestic deposits) is the 11th largest bank in the market with 1.5 percent of the market's deposits.[4]

EABC was organized in 1950 as a New York Investment Company under Article XIII of New York Banking Law, under the name Belgian-American Banking Corporation, replacing and succeeding to the business of the New York agency of Banque Belge pour L'Etranger (Overseas), Ltd., London, England. EABC, which was owned by Banque de la Societe Generale de Belgiuque and other of its Belgian affiliates, assumed its present corporate title in 1968 when Amsterdam-Rotterdam Bank, Midland Bank, and a subsidiary of Deutsche Bank became shareholders. Societe Generale and Creditanstalt Bank later became shareholders of EABC. EABC operates through its main office in New York City, two branch offices in California and a foreign branch located in Nassau, The Bahamas. EABC also has five wholly-owned subsidiaries: Euram Realty Corporation and Euramcor Realty Corporation, Jersey City, New Jersey, special-purpose, single-transaction leasing companies that acquired and lease certain real property as accommodations to EABC's customers in accordance with the conditions of § 225.4(a)(6)(b) of Regulation Y; Disk Pack Leasing Corporation, New York, New York, which is now dormant but which was engaged in the leasing of data processing equipment; and two foreign subsidiaries, European-American Finance (Bermuda), Limited, Hamilton, Bermuda, and Euro-Credit S.A., Panama, Panama, Applicant's indirect acquisition of which the Board has approved by separate letter pursuant to section 4(c)(13) of the Act.

Both Bank and EABC are owned by the same shareholders in substantially the same proportions. The proposed transaction is essentially a restructuring of the interests of these shareholders whereby ownership of Bank and EABC will be transferred to a corporation similarly owned. While Bank and EABC have many similar banking powers, Bank engages to a substantial extent in retail banking, which EABC cannot do because it is prohibited by New York Banking Law from accepting deposits from the general public.[5] It appears from the facts of record that Bank and EABC have concentrated on complementary lines of service. EABC engages primarily in international lending and banking services, and Bank concentrates on providing domestic lending and banking services. This separation derives in part from statutory restrictions on EABC's general deposit-taking and trust powers, and in part from a respective business emphasis determined by the common management of the two companies. In light of the above and other facts in the record, it appears that consummation of Applicant's proposals will eliminate no significant competition. There is a long history of common ownership, common management, and cooperative operation of the two institutions, and it appears unlikely that this relationship would be altered if the subject applications were denied. On the basis of the record before it, the Board concludes that competitive considerations are consistent with approval of the applications.[6]

The financial and managerial resources of Applicant, which will be primarily dependent upon those of Bank and EABC, are considered satisfactory and its future prospects appear favorable. Thus, considerations relating to banking factors are consistent with approval of the application to acquire Bank.

In acting on the application to acquire EABC, the Board must first determine under the provisions of section 4(c)(8) of the Act whether the activities of EABC, as a New York Investment Company, are closely related to banking or managing or controlling banks. The New York Investment Company is a unique type of banking and financing corporation organized under a separate article of New York Banking Law that is believed to have no close institutional parallel under the laws of other States. Its singular powers and status chiefly reflect the diversity of New York's financial markets and the attractiveness of such markets to domestic and foreign financial institutions alike. There are now two principal types of New York Investment Companies. One type engages primarily in financing retail sales; included among this group are some of the nation's largest finance companies, such as General Motors Acceptance Corporation and Commercial Credit Company. The other type, including EABC, is engaged in transacting virtually all of

[3] Under section 4(c)(8) of the Act, the Board may determine that the prohibitions of section 4 of the Act shall not apply to the shares of any company the activities of which the Board after due notice and opportunity for hearing has determined by order or regulation to be so closely related to banking or managing or controlling banks as to be a proper incident thereto.

[3] The Metropolitan New York market consists of the five boroughs of New York City, plus Nassau, Putnam, Rockland, and Westchester Counties, and western Suffolk County, all in New York State, as well as the northern two-thirds of Bergen County and eastern Hudson County in New Jersey and southwestern Fairfield County in Connecticut.

[4] Bank deposit data are as of December 31, 1976; market share and market rank information are as of June 30, 1975.

[5] New York Banking Law Section 509, 4 *McKinney's Consolidated Laws* (1976).

[6] In reaching its determination on competitive factors in this application, the Board took into consideration the fact that Applicant will be owned by the same group of foreign banks that presently controls Bank and EABC and that controlled combined total assets on a world-wide basis of nearly $120 billion at year-end 1975. The subject application proposes a reorganization of these banks' existing interests in Bank and EABC, and does not represent an expansion of their joint presence in U.S. markets. No adverse comments have been received from the Department of Justice on this proposal. In a letter dated July 18, 1975, from Assistant Attorney General Thomas R. Kauper to Congressman Wright Patman, Mr. Kauper stated that the Department "was aware of no evidence which would indicate that the EABTC [Bank] venture is part of a more comprehensive illegal arrangement affecting the domestic or foreign commerce of the United States. Nor does it appear that the joint venture, when viewed in the context of a very large market containing numerous powerful domestic and foreign competitors, may substantially lessen competition as defined by the courts under Section 7 of the Clayton Act." It also appears from the record of this application that the existing joint ownership of Bank and EABC by six large European banks would not be altered if the subject applications were denied. Accordingly, in these circumstances, Applicant's ownership by six large European banks presents no adverse competitive considerations.

the usual activities of a commercial bank, except the general business of accepting deposits. These "banking" Investment Companies,[7] like EABC, are all ultimately controlled or affiliated with foreign banking organizations and are engaged primarily in internationally-related activities. In this regard, it appears that the New York Investment Company has, over the years, served as a means for foreign bank entry into New York in cases where entry through a direct branch or agency was either unavailable or undesirable for the purposes sought.

Each of the lending and banking services presently offered by EABC is offered by commercial banks generally and, in this connection, EABC competes with foreign banking organizations and domestic commercial banks and their Edge Corporation subsidiaries in the provision of such services in New York.[8] It is the Board's view, in light of the above and other facts of record, especially the unique structural and competitive circumstances existing in New York, that the present activities of EABC are closely related to banking.[9] In fact, EABC's activities are so like those generally provided by commercial banks, that there is a substantial question whether EABC should be considered a "bank" for purposes of the Act.

Section 2(c) of the Act (12 U.S.C. 1841(c)) defines the term "bank" to include any institution organized under the laws of any State of the United States which "accepts deposits that the depositor has a legal right to withdraw on demand" and engages in the business of making commercial loans. EABC is a State-chartered corporation that accepts "credit balances" for the account of its customers that the customers have a legal right to withdraw on demand, and it engages in the business of making commercial loans. Accordingly, if EABC's credit balances are deposits within the meaning of section 2(c), it would satisfy the definitional test.

In 1971, the Board determined that a similar New York Investment Company was not a "bank" within the meaning of section 2(c) based largely on three considerations.[10] First, the Board was persuaded at that time that Congress meant to include in the definition of "bank" only those institutions that offer to the public the general convenience of checking account facilities. In this regard, it was found that the New York Investment Company involved could accept credit balances only as an incident to transactions it was legally permitted to perform for its customers, that it could not solicit or accept deposits of idle funds, and that its customers were not permitted to use such balances in the manner of a general checking account, although drafts could be drawn on such accounts to pay for the import and export of goods. Second, the New York Superintendent of Banks had expressed the view that the distinction between credit balances and deposits was "meaningful" and "administrable" in New York. Third, the company involved was principally engaged in financing or facilitating transactions in international or foreign commerce. Since that time, the Board has generally reviewed the activities of New York Investment Companies owned by foreign banks in the course of considering proposed legislation to regulate foreign bank activities in the United States, and has recommended to Congress that these New York Investment Companies, such as EABC, should be subject to Federal banking regulation, including reserve requirements and interest rate controls on their credit balances. In this regard and in other situations, the Board has stated that it believes the credit balance accounts of foreign bank agencies and banking New York Investment Companies are in many respects the functional equivalent of deposits when maintained in connection with the provision of traditional commercial banking services.[11] The Board, however, has not determined that credit balances should be defined as demand deposits within the meaning of section 2(c) of the Act.

Viewing the credit balance activities of EABC in light of these precedents and other facts in the record, the Board is satisfied that the considerations reflected in its 1971 ruling apply equally to EABC and that therefore EABC should not be regarded as a "bank" because it does not accept demand deposits within the meaning of section 2(c) of the Act. The focus of the Act's legislative history on the general provision of checking accounts and the longstanding acceptance of the provision of checking accounts as one of the features distinguishing commercial banks from other financial institutions are factors that must be given particular weight.[12] When such factors are considered with the historical legal and administrative distinction between credit balance and deposit accounts in New York, and Congress' general intent to exclude international banking corporations from the Act's definition of "bank",[13] the Board believes that the Act need not be extended administra-

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[7] In addition to EABC, there are: J. Henry Schroder Banking Corporation, New York, New York, a subsidiary of Schroders, Ltd., a registered foreign bank holding company; French-American Banking Corporation, New York, New York, a subsidiary of Banque Nationale de Paris, Paris, France, a registered foreign bank holding company; Nordic American Banking Corporation, New York, New York, which is owned by Svenska Handelsbanken; and Baer American Banking Corporation, New York, New York, a subsidiary of a private Swiss bank.

[8] The following banking and lending activities are those currently engaged in directly by EABC under authority of section 508 of New York Banking Law:

1. Borrowing and lending money (without limitation as to a single borrower);
2. Acquiring and disposing of bills of exchange, drafts, notes, acceptances, and other obligations for the payment of money, including bonds and mortgages on real property; making loans upon the security of such bonds and mortgages, and accepting bills of exchange or drafts upon them;
3. Issuing letters of credit;
4. Buying and selling foreign exchange;
5. Receiving funds for transmission to foreign countries;
6. Receiving and maintaining credit balances incidental to, or arising out of, the exercise of its lawful powers;
7. Investing in equity securities of any company (where such investments constitute no more than 5 per cent of the company's outstanding voting stock); and
8. Operating a foreign branch and through that branch receiving funds in the form of time account credit balances (almost entirely from foreign persons), lending such funds to banks and corporations primarily located outside the United States, and placing such funds in time accounts with banks.

[9] Two courts that have considered the "closely related" language in section 4(c)(8) of the Act have concluded, inter alia, that an activity generally engaged in by banks directly would generally qualify as "closely related" to banking or managing or controlling banks within the meaning of the statute. *National Courier Association* v. *Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975); *Alabama Association of Insurance Agents* v. *Board of Governors of the Federal Reserve System*, 533 F.2d 224 (5th Cir. 1976), modified, ____ F.2d ____ (5th Cir. January 10, 1977).

[10] Board letter of November 8, 1971 to the San Francisco Reserve Bank concerning the status of French-American Banking Corporation; see also Board Order of February 7, 1972 approving the application of Banque Nationale de Paris to retain French-American Banking Corporation under section 4(c)(9) of the Act, 58 Federal Reserve Bulletin 312 (1972).

[11] See the Board's Order of May 30, 1975, denying Bank of Tokyo's application to acquire Tokyo Bancorp International (Houston), Inc., Houston, Texas, under section 4(c)(9) of the Act, 61 Federal Reserve Bulletin 449 (1975); and a Board letter of March 17, 1977, to Citibank, N.A., New York, New York, regarding a proposal by Grindlays Bank, Ltd., London, England, to establish an agency in New York City.

[12] See *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 356 (1962), where the Supreme Court in explaining the cluster of products and services that make commercial banking a distinct line of commerce for purposes of section 7 of the Clayton Act, noted that: Some commercial banking products or services are so distinctive that they are entirely free of effective competition from products or services of other financial institutions; the checking account is in this category.

[13] The definition of "bank" in section 2(c) of the Act specifically excludes Edge Act and Agreement Corporations operating under sections 25(a) and 25 of the Federal Reserve Act, respectively, and any other "organization that does not do business within the United States except as an incident to its activities outside the United States."

tively to include institutions such as EABC or other New York Investment Companies owned by foreign banks, so long as they continue to engage primarily in international banking activities. The resolution of the status of such companies under Federal banking laws, in light of the above considerations, is more properly a matter for legislative determination and, in this connection, the Board has recommended to Congress that New York Investment Companies owned or controlled by foreign banks be subject to the same Federal regulation that Congress may impose on branches and agencies of foreign banks.

Although, as determined above, EABC is presently engaged in activities closely related to banking, Applicant has also applied to engage through EABC in all activities permissible to EABC as a New York Investment Company under Article XII of the New York Banking Law, except that Applicant has agreed that (1) notwithstanding its broad investment powers, EABC will not invest in more than 5 percent of the voting shares of any company except with prior Board approval under the Act, and (2) EABC will continue to conduct its indirect leasing activities in accordance with § 225.4 (a) (6) of Regulation Y. Because EABC is already affiliated with Bank, a member bank, it is foreclosed by section 20 of the Glass-Steagall Act (12 U.S.C. § 337) from engaging principally in securities underwriting and distribution activities even though Article XII of the New York Banking Law permits a broad range of such securities activities to New York Investment Companies. Applicant has stated that EABC is not now engaged in underwriting activities and in the future would only engage in underwriting activities permissible to Bank.[14] Subject to these limitations, EABC's present and proposed activities all appear to be closely related to banking.

In order to approve the subject application by Order under section 4(c) (8), the Board is required to determine that Applicant's proposed operation of EABC as a New York Investment Company is a proper incident to banking or managing or controlling banks. This test requires the Board to consider whether Applicant's acquisition and operation of EABC pursuant to this application "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices". This statutory test necessitates a positive showing by Applicant that the public benefits of its proposal outweigh the possible adverse effects of its proposed acquisition. In the present case, the Board has determined that, based on the particular facts and circumstances and unique public benefits associated with this application, factors relating to the convenience and needs of the community to be served lend weight to approval of Applicant's application to acquire Bank, and the public benefits of its application to acquire EABC, subject to the conditions noted in this Order, outweigh the possible adverse effects of that proposal and therefore satisfy the "proper incident" test of section 4(c) (8) of the Act.

It is expected that approval of the subject applications will result in the more efficient operation of both Bank and EABC through improved internal supervision. Moreover, interposition of a holding company structure in this situation can be expected to reduce borrowing costs and permit Bank and EABC to raise capital more efficiently; in particular, since Applicant will become a primary or joint obligor on Bank's note to the FDIC arising out of the Franklin acquisition, EABC's earnings may also be applied toward reducing that debt, thus better enabling Bank to meet the convenience and needs of the communities it serves. In this regard, Applicant specifically expects to reduce the borrowing costs of Bank and EABC through the commitment of its shareholder banks to advance $25 million, $15 million for the benefit of Bank, replacing more expensive debt, and $10 million to EABC as additional capital. Approval of this particular application will also insure that, notwithstanding its broad powers under Article XII of New York Banking Law, EABC, an existing affiliate of Bank, will only engage in activities that are closely related to banking and proper incidents thereto.

EABC, like similar New York Investment Companies owned by foreign banks and agencies of foreign banks, does not have to maintain reserves against its credit balance accounts, and these accounts are not subject to interest rate limitations. While maintenance of such accounts may not cause EABC to be a "bank" for purposes of section 2(c) of the Act, the Board believes that for purposes of reserve requirements and interest rate limitations, such accounts should be considered to be deposits. The Board has, in this regard, specifically recommended to the Congress that it be given the authority to impose reserve requirements and interest rate limitations on all foreign bank operations in this country—whether conducted through branches, agencies, New York Investment Companies, or bank subsidiaries—because of the growing importance of such institutions in this country's money markets and their particular ability to transmit funds from abroad. Thus, from a broader structural and monetary policy viewpoint, the Board is seriously concerned by the fact that credit balance accounts maintained by foreign banking organizations are not generally subject to reserve requirements. In the Board's view, any proposal under section 4(c) (8) of the Act that would have the effect of diminishing the reserve base either by facilitating the acceptance of reserve-free credit balances or encouraging a shift from reservable deposits to such balances would entail serious adverse effects. This particular application, however, involves only a reorganization of the ownership of EABC, and insofar as the credit balances of EABC are concerned, the proposal merely preserves the status quo and does not reduce the reservable deposit base of the banking system or otherwise create an opportunity to shift deposits that does not already exist. If necessary, and in particular if a deliberate attempt to evade or circumvent domestic reserve or interest requirements were discovered, the Board could in the future proceed by regulation or otherwise to subject credit balance accounts held by member bank affiliates engaged in banking operations to the requirements of Regulations D and Q.[15] However, to subject only EABC and possibly one or two other foreign bank operations to these requirements at this time,[16] when most other foreign bank operations are conducted free from monetary controls, would put these institutions at a competitive disadvantage under existing circumstances. The most equitable solution to the problem of reserve-free credit balance accounts at foreign bank operations is uniform foreign bank legislation, a solution the Board has proposed and consistently recommended since 1974.

EABC has established two branches in California at which it engages primarily in international banking and lending services, but at which it may also engage in purely domestic commercial lending activities. The Board does not believe that it was within the intent of Congress to authorize under section 4(c) (8) of the Act the ownership of companies that would enable domestic bank holding companies to conduct an international banking business on a multistate basis outside of the explicit legal framework set up by the Congress in sections 25 and 25(a) of the Federal Reserve Act.[17]

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[14] The Board recently decided to defer action on a proposal to make underwriting and dealing in Federal Government securities and general obligations of States or their subdivisions a permissible activity for bank holding companies. Board Order of October 19, 1976, 62 Federal Reserve Bulletin 928, 973 (1976).

[15] Approximately 70 percent of EABC's credit balance accounts are maintained at its foreign branch and payable abroad, and deposits payable only outside the United States are generally exempt from reserve and interest rate requirements.

[16] J. Henry Schroder Banking Corporation is also affiliated with a member bank, and Grindlays Bank, Ltd., in which Citibank has a substantial equity interest, plans to open an agency in New York at which credit balances will be maintained.

[17] In 1972, the Board permitted a foreign bank holding company under section 4(c) (9) of the Act to retain its interest in a New York Investment Company even though it was organizing a bank subsidiary in California. Board Order of February 7, 1972 approving Banque Nationale de Paris' retention of French-American Banking Corporation, 58 Federal Reserve Bulletin 311 (1972). In 1975, the Board denied an application by Bank of Tokyo, Tokyo, Japan, a foreign bank holding company, to acquire an international banking company, Tokyo Bancorp International (Houston), Inc., in a State outside of its State of principal banking operations under section 4(c) (9). Board Order of May 30, 1975, 61 Federal Reserve Bulletin 449 (1975). The Board subsequently

In particular, EABC's California offices are not subject to the restrictions on domestic business imposed on Edge Act and Agreement Corporations. Acquisition of such offices could give Applicant a competitive advantage over other domestic banking organizations and could thus undermine the domestic structure of multistate international banking competition that has been carefully prescribed by the Congress to avoid the conduct of domestic commercial banking operations at offices in more than one State. Such possible adverse effects on the structure and conduct of banking operations in this country are not, in the Board's judgment, outweighed by any particular benefits to be derived from Applicant's acquisition of EABC's California offices. The competitive benefits that may be derived from Applicant's presence in California can be equally achieved through Applicant's direct or indirect acquisition of an Agreement Corporation subsidiary in California, in accordance with the framework established by the Congress for the conduct of such activities on a multistate basis.[18] Accordingly, the Board has determined that ownership by Applicant of EABC, if EABC maintains its California offices, is not a proper incident to banking or managing or controlling banks, and that to conform with this determination Applicant must, if it acquires EABC, divest EABC's California offices within two years from the date as of which Applicant becomes a bank holding company.

EABC also has a branch in Nassau, The Bahamas, which engages in the types of banking activities conducted by shell branches of U.S. banks. So long as this branch limits its activities to those permissible for EABC under this Order, the Board believes that Applicant may operate this branch of EABC under section 4(c)(8) of the Act.[19] If Applicant or EABC proposes to engage in activities outside this country that are not permissible for EABC under this Order, Applicant may file a separate application under section 4(c)(13) of the Act to organize a subsidiary to engage in those activities.

Applicant has also applied to engage in three activities permissible for New York Investment Companies but in which it is not now engaged and has no fixed present intention to engage: underwriting activities permissible to Bank, a member bank, dealing in coin and bullion, and acting as financial agent of the Federal Government and as depositary of Federal money. The Board has deferred consideration of a proposal to specify the first of these activities to be permissible for bank holding companies under Regulation Y,[20] and in the Board's judgement, Applicant has not established any public benefits that would be derived from its engaging in any of these three activities through EABC. For this reason, the Board is unable to conclude that ownership of EABC, if EABC engaged in these activities, would be a proper incident to banking or managing or controlling banks. The Board is compelled to conclude instead, in light of the facts in the record, that EABC as a subsidiary of a domestic bank holding company, should not engage in these activities until it is able to present specific proposals concerning them and the manner in which and extent to which they would be conducted, and the specific public benefits that would be derived.

In its consideration of this proposal, the Board also noted that Applicant will serve as a single vehicle for the ownership of Bank and EABC by their existing foreign bank shareholders. The Board has previously determined that no one of the foreign bank shareholders of Bank is now a bank holding company and that the shareholders have not heretofore formed themselves into a "company", as defined in the Act, to control Bank. On the basis of the record, this reorganization does not appear to affect those conclusions. However, the Board is concerned that the close association of Applicant's shareholders could create opportunities for additional investments and activities by this group in the United States under circumstances that could be inconsistent with the purposes of the Act. Accordingly, the Board's approval of these applications is conditioned on a requirement that Applicant's foreign bank shareholders not proceed, otherwise than through Applicant, in substantially the same combination to engage directly or indirectly in additional banking or nonbanking activities or business ventures in this country.[21] The Board may, in any event, reconsider the question whether the shareholders have combined to act together as a company if in the future it appears the shareholders are not acting independently as essentially passive investors, and take appropriate action under the Act.

On the basis of the foregoing and all the facts of record, the Board has determined that the considerations affecting the competitive, banking, and convenience and needs factors under section 3(c) of the Act, and the balance of the public interest factors the Board must consider under section 4(c)(8) of the Act in permitting a bank holding company to engage in an activity on the basis that it is closely related to banking both favor approval of the applications subject, however, to the following conditions:

(1) That EABC continue to engage principally in the financing or facilitating of transactions in international or foreign commerce, and not accept demand deposits;

(2) That EABC comply with all reserve and interest rate requirements that may be imposed on it either as a result of action of the Board or enactment of legislation;

(3) That Applicant cause EABC to divest its offices in California within two years from the date as of which Applicant becomes a bank holding company;

(4) That EABC confine the activities of its Nassau branch to those permissible to EABC at its head office under this Order;

(5) That EABC not engage in the activities of underwriting, selling, or distributing securities, buying or selling coin and bullion, or acting as a financial agent of the United States Government or as a depositary of public moneys of the United States, or in any new activity in which New York Investment Companies by subsequent enactment may be empowered to engage, without the prior approval of the Board; and

(6) That Applicant's shareholders, and their parent and subsidiary organizations, will not, except through Applicant with the Board's approval under the Act, engage, as part of a group consisting of substantially the same companies as are shareholders of Applicant, in any additional banking or nonbanking activities or business ventures within the United States, other than normal banking transactions,[22] and that none of

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approved Bank of Tokyo's application to acquire the same corporation as an Agreement Corporation subsidiary subject to the restrictions of section 25 of the Federal Reserve Act. Board letter of January 26, 1976, 62 Federal Reserve Bulletin 164. While Applicant is owned by foreign banks, it will not be a foreign bank holding company, and thus the issue presented in this case is whether a domestic bank holding company, irrespective of its ownership, should be allowed to use section 4(c)(8) of the Act to conduct a combination of domestic and international banking activities across State borders.

[18] The Board has considered Applicant submissions on this issue and believes the fact that EABC can engage in certain domestic activities not permissible to Edge Act or Agreement Corporations weighs in favor of denial rather than approval for the reasons cited in this Order.

[19] The Board notes that Regulation Y currently provides for the establishment of de novo branches under section 4(c)(8) in accordance with the procedures described in § 225.4(b)(1) of Regulation Y. These procedures, requiring local newspaper publication, are designed for domestic expansion of section 4(c)(8) offices; any bank holding company proposing to establish a branch of a section 4(c)(8) company outside of the United States should file a specific application to do so under § 225.4(b)(2). The Board has directed its staff to develop proposed procedures for the establishment of foreign offices of section 4(c)(8) companies to be published for public comment in the FEDERAL REGISTER.

[20] *Supra*, n. 14.

[21] The Board has imposed similar conditions in other circumstances where a bank is to be owned by several banking organizations. See Board Order of May 6, 1977 approving the amended application of SYB Corporation, Oklahoma City, Oklahoma, to become a bank holding company and Board letter of January 26, 1976, to Thomas L. Farmer, Esq. re UBAF Arab-American Bank, New York, New York.

[22] For the purpose of this condition, the exception for normal banking transactions is intended to permit several of Applicant's shareholders to participate independently in the same syndicated loan or other credit transaction, to maintain independently normal correspondent relationships with the same domestic bank, and to engage independently in other transactions of that character. The exception is not intended to permit the joint establishment of representative offices, branches, agencies, or the joint organization of or acquisition of voting shares in a United States organization by substantially the same shareholders as own Applicant.

Applicant's shareholders will sell, assign, or transfer any of its shares of Applicant unless it has obtained the agreement of any purchaser, assignee, or transferee to comply with this condition.

Subject to the conditions prescribed in this Order, the applications are hereby approved based on the record and for the reasons summarized above. The acquisition of Bank shall not be made before the thirtieth calendar day following the effective date of this Order; and the acquisition of Bank and EABC shall not be made later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of New York pursuant to delegated authority. The determination as to Applicant's operation of EABC is subject to the conditions set forth in this Order and in § 225.4(c) of Regulation Y, and to the Board's authority to require reports by and make examinations of bank holding companies and their subsidiaries, and to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's Orders and regulations issued thereunder, or to prevent evasion thereof.

By order of the Board of Governors,[2] effective May 10, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

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FIRST CITY BANCORP. OF TEXAS, INC.

Request for Determination and Notice Providing Opportunity for Hearing

Notice is hereby given that a request has been made to the Board of Governors of the Federal Reserve System, pursuant to the provisions of section 2(g)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(g)(3)) ("the Act"), by First City Bancorporation of Texas, Inc., Houston, Texas ("First City"), for a determination that, with respect to a sale by First City (through its subsidiary, Texas Bank and Trust Company of Dallas and its affiliate, Texas Fiduciary Corporation, both located in Dallas, Texas) of First Bank & Trust Company, Cedar Hill, Texas ("First B&T"), to Mr. Patrick J. Leonard, First City is not, nor will be, in fact capable of controlling either First B&T or Patrick J. Leonard.

Section 2(g)(3) of the Act provides that shares transferred after January 1, 1966, by any bank holding company (or any company which but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor, unless the Board, after opportunity for hearing, determines that the transferor is not, in fact, capable of controlling the transferee.

Notice is hereby given, that, pursuant to section 2(g)(3) of the Act, an opportunity is provided for filing a request for oral hearing. Any such request or written comments on the application should be submitted in writing (in duplicate) to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than June 7, 1977. If a request for oral hearing is filed, each request should contain a statement of the nature of the requesting person's interest in the matter, his reasons for wishing to appear at an oral hearing, and a summary of the matters concerning which such person wishes to give testimony. The Board subsequently will designate a time and place for any hearing it orders, and will give notice of such hearing to the transferor, the transferee, and all persons that have requested an oral hearing. In the absence of a request for an oral hearing, the Board will consider the requested determination on the basis of documentary evidence filed in connection with the application.

Board of Governors of the Federal Reserve System, May 10, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-14016 Filed 5-16-77;8:45 am]

WASHINGTON BANCORP.

Order Approving Formation of Bank Holding Company

Washington Bancorporation, Washington, Iowa ("Applicant"), has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of formation of a bank holding company through acquisition of 80 per cent (or more) of the voting shares of the successor by merger to The National Bank of Washington, Washington, Iowa ("Washington Bank"), and Ainsworth State Bank, Ainsworth, Iowa ("Ainsworth Bank"). The merger of The National Bank of Washington and Ainsworth State Bank was approved by the Comptroller of the Currency on February 1, 1977, under the charter and title of The National Bank of Washington ("Bank"). Upon consummation of the merger, the present office of Ainsworth State Bank would serve as a branch facility of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, a nonoperating corporation with no subsidiaries, was organized for the purpose of becoming a bank holding company through the acquisition of Bank. Consolidating figures from Washington Bank and Ainsworth Bank indicates that Bank would have deposits of $23.1 million[1] and be the largest of nine banks in the relevant market,[2] controlling approximately 23 per cent of the total deposits in commercial banks in the market. Upon acquisition of Bank, Applicant would control the 128th largest commercial bank in Iowa and .19 per cent of the total deposits in commercial banks in the State. Applicant presently has no subsidiaries and engages in no activities. Since the proposal is designed solely to place ownership of Bank into corporate form and Applicant has no subsidiaries, consummation of the proposal would neither eliminate significant existing or potential competition nor increase the concentration of banking resources in any relevant market. Accordingly, competitive considerations are consistent with approval of the application.

The financial and managerial resources of Washington Bank and Ainsworth Bank are generally satisfactory. The financial and managerial resources of Applicant and Bank, which will depend on the resources of Washington Bank and Ainsworth Bank, should also be generally satisfactory. Accordingly, considerations relating to the financial and managerial resources and future prospects of Applicant and Bank are consistent with approval of the application.

While it appears that no changes in services will be made as a result of Applicant's acquisition of Bank, it appears that consummation of the merger will improve and expand the services offered by Bank. Accordingly, considerations relating to the convenience and needs of the community to be served as they relate to this application are also regarded as consistent with approval. It is the Board's judgment that consummation of the proposed transaction would be consistent with the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the

[2] Voting for this action: Governors Wallich, Coldwell, Jackson and Partee. Voting against this action: Governor Lilly. Absent and not voting: Chairman Burns and Governor Gardner.

Dissenting statement of Governor Lilly filed as part of the original document. Copies are available upon request from the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or the Federal Reserve Bank of New York.

[1] Deposits as of June 30, 1976.

[2] The Washington County banking market is approximated by all of Washington County.

Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,[3] effective May 11, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-14017 Filed 5-16-77;8:45 am]

WINNER BANSHARES, INC.

Formation of Bank Holding Company

Winner Banshares, Inc., Winner, South Dakota, which currently owns 2.9 per cent of the voting shares of Farmers State Bank, Winner, South Dakota ("Bank"), has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of an additional 94.4 per cent of the voting shares of Bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than June 8, 1977.

Board of Governors of the Federal Reserve System, May 11, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-14018 Filed 5-16-77;8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Notice of Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on May 10, 1977. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FEA request are are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before June 6, 1977, and should be addressed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5033, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL ENERGY ADMINISTRATION

FEA requests clearance of a new voluntary Form FEA-U537-S-0, Media Survey (Radio and Television). The FEA-U537-S-0 will be used to survey all Radio and Television stations throughout the United States to ascertain to what extent Educational Energy Conservation Tapes distributed by the FEA are being aired. FEA estimates respondents to this survey number approximately 1,625 (a 25 percent sample of 5,500 Radio stations and 1,000 Television stations) and that reporting burden averages 15 minutes per response.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.77-14051 Filed 5-16-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

PSYCHIATRY EDUCATION REVIEW COMMITTEE

Meeting Change

In FR Doc. 77-11370, appearing at pages 20503-04 in the issue of Wednesday, April 20, 1977, the dates for the meeting of the Psychiatry Education Review Committee have been changed from May 23-24 to June 20-21.

All other information about this open meeting remains as published April 20. Contact person—Connie Verney, Room 8C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-2120.

Dated: May 11, 1977.

CAROLYN T. EVANS,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc.77-14002 Filed 5-16-77;8:45 am]

Food and Drug Administration

[Docket No. 77N-0162]

DRUGS FOR HUMAN USE; DRUG EFFICACY STUDY IMPLEMENTATION

Revocation of Exemption for Continued Marketing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking the temporary exemptions under which certain drugs were allowed to remain on the market, labeled for their less-than-effective indications, beyond the time limit established for implementation of the Drug Efficacy Study. The drugs are azuresin, guanidine, and a combination containing dicyclomine hydrochloride, doxylamine succinate, and pyridoxine hydrochloride. The exemptions are no longer needed as the effectiveness classification of the drugs has now been resolved.

DATES: Effective date: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert H. Hahn, Administrative Compliance Branch (HFD-32), Bureau of Drugs, Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-4650.

SUPPLEMENTARY INFORMATION: In a notice published in the FEDERAL REGISTER of December 14, 1972 (37 FR 26623), FDA issued a list of drugs that had been evaluated under the Drug Efficacy Study and classified as less than effective for their labeled indications but, because of medical need, could remain on the market pending completion of scientific studies to determine their effectiveness. The temporary exemption applied to the listed products and to any similar, identical, or related products, provided studies were undertaken. Among those listed were Diagnex Blue (azuresin) and guanidine. The December 14, 1972 notice was amended by a notice published in the FEDERAL REGISTER of May 15, 1974 (39 FR 17343) granting an exemption for continued marketing of combination drug products containing dicyclomine hydrochloride, doxylamine succinate, and pyridoxine hydrochloride.

As a result of subsequent study of the drug products, the questions of their effectiveness have now been resolved. Azuresin was reclassified as effective in a notice (DESI 607) published in the FEDERAL REGISTER of September 18, 1973 (38 FR 26137). Guanidine was reclassified as effective in a notice (DESI 1546) published July 8, 1974 (39 FR 24933). The three-component combination was reclassified as lacking substantial evidence of effectiveness in a notice (DESI 10598) published January 28, 1977 (42 FR 5422).

Inasmuch as the temporary exemptions for the products are no longer relevant, they are hereby revoked. Accordingly, the December 14, 1972 notice, as amended by the May 15, 1974 notice, is further amended by deleting the following sections:

VI. Diagnostic Agents.
XII. Guanidine.
XVI. Antiemetic Combination Drug.

(Secs. 505, 701, 52 Stat. 1052-1053 as amended, 1055-1056 as amended (21 U.S.C. 355, 371) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).)

Dated: May 6, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-13835 Filed 5-16-77;8:45 am]

[3] Voting for this action: Vice Chairman Gardner and Governors Wallich, Coldwell, Partee, and Lilly. Absent and not voting: Chairman Burns and Governor Jackson.

[Docket No. 76P-0429]

DEL MONTE CORP.

Tomato Juice Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration has issued to the Del Monte Corp., as requested, a temporary permit to market test tomato juice made from concentrate prepared from tomato paste, water, and salt and in which the vitamin C content is raised to a level of 100 percent of the U.S. Recommended Daily Allowance (U.S. RDA) per 6-fluid-ounce serving. The finished product deviates from the standard of identity for tomato juice.

DATES: This permit is effective for a period of 15 months beginning no later than August 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Benjamin M. Gutterman, Bureau of Foods (HFF-402), 200 C St. SW., Washington, D.C. 20204 (202-245-1231).

SUPPLEMENTARY INFORMATION: In accordance with § 130.17 (21 CFR 130.17, formerly 21 CFR 10.5 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated pursuant to section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), notice is given that a temporary permit has been issued to Del Monte Corp., P.O. Box 3575, San Francisco, CA 94119. This permit covers interstate market testing of tomato juice that deviates from the standard of identity prescribed in § 156.145 (21 CFR 156.145, formerly §53.1 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)). This permit provides for the temporary marketing of 120,000 cases of twelve 46-ounce cans of the product to be distributed as follows:

1. In the States of Arkansas, Illinois, and Tennessee.

2. In the metropolitan areas of Indianapolis, Indiana; Louisville and Paducah, Kentucky; Detroit and Grand Rapids, Michigan; St. Louis, Missouri; and Dayton, Ohio.

The test product will be manufactured in the Del Monte plant in Frankfort, Indiana. The product to be temporarily marketed has been prepared from tomato paste that complies with the requirements of § 155.191(a) (1) (21 CFR 155.191(a)(1)), formerly 21 CFR 53.30 (a)(1) prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), water, and salt. The finished product will be equivalent to a single-strength tomato juice normally found in the marketplace. In addition, ascorbic acid will be added in such quantity sufficient to raise the vitamin C level to 100 percent of the U.S. RDA in a 6-fluid-ounce serving.

The principal display panel of the labels will declare the product name as "Tomato Juice From Concentrate". The statement "enriched with vitamin C" will be prominently designated on the principal display panel. Each of the ingredients used, except for the tomato ingredient, will be declared on the label as required by the applicable sections of Part 101 (21 CFR Part 101, formerly 21 CFR Part 1 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)). The tomato ingredient complying with the requirements of § 155.191(a) (1) will be declared as "tomato concentrate".

This permit is effective for 15 months, beginning on the date the new food is introduced or caused to be introduced into interstate commerce, but no later than August 15, 1977.

Dated: May 11, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-13995 Filed 5-16-77;8:45 am]

[Docket No. 76P-0508]

HANOVER BRANDS, INC.

Tomato Juice Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has issued to Hanover Brands, Inc., as requested, a temporary permit to market test tomato juice made from concentrate prepared from tomato paste, water, and salt. The finished product deviates from the standard of identity for tomato juice.

DATE: This permit is effective for a period of 15 months beginning no later than August 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Benjamin M. Gutterman, Bureau of Foods (HFF-402), 200 C St. SW., Washington, D.C. 20204, 202-245-1231.

SUPPLEMENTARY INFORMATION: In accordance with § 130.17 (21 CFR 130.17, formerly 21 CFR 10.5 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)) concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated pursuant to section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), notice is given that a temporary permit has been issued to Hanover Brands, Inc., P.O. Box 334, Hanover, PA 17331. This permit covers interstate marketing tests of tomato juice that deviates from the standard of identity prescribed in § 156.145 (21 CFR 156.145, formerly § 53.1 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)). The permit provides for the temporary marketing of 15,000 cases of twenty-four 5½-ounce cans and 15,000 cases of twenty-four 12-ounce cans of the product to be distributed in the District of Columbia and the States of New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia.

The test product will be manufactured in the Hanover Brands, Inc., plant located in Hanover, Pennsylvania. The product to be temporarily marketed has been prepared from tomato paste that complies with the requirements of § 155.191(a) (1) (21 CFR 155.191(a) (1), formerly 21 CFR 53.30(a) (1) prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), water, and salt. The finished product will be equivalent to a single-strength tomato juice normally found in the marketplace.

The principal display panel of the labels will declare the product name as "Tomato Juice From Concentrate." Each of the ingredients used, except for the tomato ingredient, will be declared on the label as required by the applicable sections of Part 101 (21 CFR Part 101, formerly 21 CFR Part 1 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)). The tomato ingredient complying with the requirements of § 155.191(a) (1) will be declared as "tomato concentrate."

This permit is effective for 15 months, beginning on the date the new food is introduced or caused to be introduced into interstate commerce, but no later than August 15, 1977.

Dated: May 11, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-13993 Filed 5-16-77;8:45 am]

[FDA-225-77-4001]

REGULATORY INVESTIGATIONS INVOLVING DRUG, PESTICIDE, AND INDUSTRIAL CHEMICAL RESIDUES IN ANIMAL FEEDS AND IN MEAT AND POULTRY

Memorandum of Understanding With the Iowa State Department of Agriculture

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency is announcing that a memorandum of understanding has been executed with the Iowa State Department of Agriculture. The purpose of the memorandum is to establish an FDA/State cooperative program for inspections and related activities to ensure the safety of foods for humans and animals.

DATES: The memorandum of understanding became effective March 24, 1977.

FOR FURTHER INFORMATION CONTACT:

Gary Dykstra, Compliance Coordination and Policy Staff (HFC–13), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3470.

SUPPLEMENTARY INFORMATION: Pursuant to the notice published in the FEDERAL REGISTER of October 3, 1974 (39 FR 35697) stating that future memoranda of understanding between the Food and Drug Administration and others would be published in the FEDERAL REGISTER, the Commissioner of Food and Drugs is issuing the following memorandum of understanding:

MEMORANDUM OF UNDERSTANDING BETWEEN THE IOWA DEPARTMENT OF AGRICULTURE AND THE FOOD AND DRUG ADMINISTRATION

REGULATORY INVESTIGATIONS INVOLVING DRUG, PESTICIDE, AND INDUSTRIAL CHEMICAL RESIDUES IN ANIMAL FEEDS AND IN MEAT AND POULTRY

The Food and Drug Administration (FDA) of the Department of Health, Education, and Welfare is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301). In fulfilling its responsibilities under the act, FDA directs its activities toward the protection of the public health of the nation by ensuring that foods for humans and animals are safe and wholesome and that animal feeds are free of illegal drug, pesticide, and industrial chemical residues. This is accomplished by inspecting the processing and distribution of animal feeds and examining samples thereof to assure compliance with the act.

The Iowa Department of Agriculture, under its state authorities, conducts investigations and related activities to assure the safety and wholesomeness of foods and feeds.

Meat and poultry may become contaminated with illegal drug, pesticide, or industrial chemical residues from several sources, including the misuse of animal drugs, the use of animal feeds containing illegal drugs, pesticides, and industrial chemicals, or from the environment. As a result, the State agency and FDA have certain related objectives in carrying out their respective regulatory and service activities. Therefore, it is desirable from the standpoint of public interest to set forth in this Memorandum of Understanding, the work-sharing program being adopted to enable each agency to discharge, as effectively as possible, its responsibilities relative to the problem of illegal drug, pesticide, and industrial chemical residues in meat and poultry and in feeds for food-producing animals. This Memorandum of Understanding will augment the agreement between FDA and the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture relative to their regulatory programs involving residues in animal feeds and in meat and poultry, which was published in the FEDERAL REGISTER of April 10, 1975 (40 FR 16228).

I. *Purpose.* It is the purpose of this understanding to establish an FDA/State cooperative program wherein the Iowa State Department of Agriculture (ISDA) will conduct followup inspections on Animal and Plant Health Inspection Service, U.S. Department of Agriculture (APHIS/USDA) residue findings and thus avoid duplicative inspections by the FDA Kansas City Field Office and ISDA.

II. *Background.* Under the FDA/APHIS cooperative program formalized in the April 10 Memorandum of Understanding, the FDA Kansas City Regional Office is notified when violative residue findings are encountered in meat and poultry tissues under the APHIS National Residue Monitoring Program. APHIS also notifies the ISDA Director of Agriculture, Meat and Poultry Division of the residues. By informal agreement Kansas City Regional Office undertook all followup inspections.

There has been an increase in the residue reports requiring followup in Iowa, and there is a need for more expeditious investigation and reporting. The Kansas City Regional FDA Office and the Iowa State Department of Agriculture expressed interest in a joint Kansas City Regional FDA Office and ISDA program, which would reduce travel time and avoid any duplication in investigations.

III. *Work-Sharing Program.* A. Goals and Responsibilities: The parties to this understanding will share the responsibility for the investigation of APHIS/USDA reports of illegal residues found in edible tissue samples of meat or poultry originating in the State of Iowa. Close liaison and communications will be maintained to assure that manpower is efficiently utilized and regulatory efforts are properly coordinated to achieve a high level of industry compliance.

B. The Food and Drug Administration, Region VII, Kansas City Regional Office, will:

1. Designate a coordinator to accomplish the goals of this Memorandum of Understanding.

2. Coordinate with ISDA to determine whether APHIS/USDA residue findings represent a first, second, or subsequent violation.

3. On a first violation report, reach agreement with ISDA on which agency shall undertake the investigation except that Kansas City Regional FDA Office shall conduct an investigation where it appears that regulatory action can be supported on a first violation.

4. Conduct all second and subsequent violation followups in all cases where the investigation on the first violation resulted in evidence adequate to support regulatory action.

5. Issue the warning letter in all cases where the FDA Kansas City Regional Office has been called in to complete the investigation for regulatory purposes.

6. Provide copies of all investigation reports, warning letters, and responses from establishments to ISDA.

7. Provide training for ISDA personnel

7. Provide training for ISDA personnel concerning the documentation of violations of the Federal Food, Drug, and Cosmetic Act to identify the probable cause and responsible individuals.

8. Be responsible for the analysis of samples collected during the investigation, and properly store the sample required under section 702(b) of the act (21 U.S.C. 372 (b)) pending the outcome of the FDA or State investigations. This sample shall be retained for 3 years pending possible court action, unless the Kansas City regional FDA Office determines the culpability has not been established, or methology is not adequate to support a violation. In the latter event, the sample will be discarded.

C. The Iowa State Department of Agriculture will:

1. Upon the request of the Kansas City Regional FDA Office, conduct the investigation for the purpose of determining the probable cause of the violation and the culpable individual(s) and to promote voluntary compliance.

2. Immediately notify the Kansas City Regional FDA Office when their investigation identifies the probable cause and the responsible individual(s) and it appears that a regulatory action can be supported, so that FDA or joint inspection can be conducted to develop supporting evidence.

3. Where regulatory action cannot be supported, develop investigational reports, including an endorsement of proposed or actual followup, which shall be promptly submitted to the Kansas City Regional FDA Office. ISDA shall take the responsibility for forwarding copies of the reports to regional FDA offices.

4. At the request of Kansas City Regional FDA Office, conduct investigations of second incidents where the first investigation failed to disclose sufficient evidence to support regulatory action. This second investigation will be conducted under the same conditions as described under paragraphs C.1. and 2. above.

5. Bring any action that may be indicated under the State law, whether or not a case may or may not be brought by the Kansas City Regional FDA Office.

6. Notify the FDA Coordinator of actions being initiated and final results.

7. Keep the FDA Coordinator fully informed of pertinent details relating to this program, including copies of correspondence to producers, shippers, etc.

IV. *Term of Understanding.* A. This understanding will expire on March 24, 1978 unless renewed and signed by both cooperating agencies to continue it in effect for another year.

B. A new Memorandum of Understanding will be prepared each year with asterisks included to indicate revision.

C. This understanding in its entirety, or in part, may be revised by mutual consent or terminated upon 30 day advance written notice by either agency.

Approved and accepted for the Iowa State Department of Agriculture:

Dated: March 24, 1977.

R. H. Lorensberry, *Secretary, Iowa Department of Agriculture.*

Approved and accepted for the Food and Drug Administration:

Dated: March 24, 1977.

Lloyd R. Claiborne, *Regional Food and Drug Director, Food and Drug Administration, Kansas City, Regional Office.*

Effective date: This memorandum of understanding became effective March 24, 1977.

Dated: May 11, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-13994 Filed 5-16-77;8:45 am]

[Docket No. 77N-0086]

SOURCE PLASMA (HUMAN)

Extension of Effective Date for Shipment Without License; Availability of Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document (1) extends to July 11, 1977, the time within which manufacturers may continue to ship Source Plasma (Human) in interstate commerce without a license, and (2) announces the availability of guidelines for Source Plasma (Human).

EFFECTIVE DATE: May 17, 1977.

ADDRESSES: Written comments and requests for copies of guidelines (identified with the FDA docket number in the

heading of this document) to the Hearing Clerk (HFC–20), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Al Rothschild, Bureau of Biologics (HFB–620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD 20014 (301–443–1920).

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs issued a notice, published in the FEDERAL REGISTER of April 5, 1977 (42 FR 18129), advising manufacturers of Source Plasma (Human) that they would no longer be permitted to ship such plasma in interstate commerce, regardless of its intended use, unless they had received a license or an approved amendment of a license by May 11, 1977.

In response to the April 1977 notice, the Commissioner received a request from the American Blood Resources Association (ABRA) to publish a notice of availability of Food and Drug Administration (FDA) guidelines employed in evaluating license applications for Source Plasma (Human) and to extend by 120 days the effective date after which manufacturers could no longer ship Source Plasma (Human) in interstate commerce without a license. Because the guidelines were not formally made available to all applicants, ABRA contends, licenses or amendments should not be denied for noncompliance.

The Commissioner advises that presently most applications comply with all FDA standards. With the exception of specific guidelines for noninjectable use and for red blood cell immunization, these application criteria have been applied to Source Plasma (Human) since 1973; they were well distributed in the plasmapheresis community. Moreover, the Commissioner notes that any application processing delay due to deviations caused by the unavailability of guidelines would be resolved in less than 60 days if the appplicant responded within a reasonable period of time after FDA gave notice of the deviations. However, to assure that a delay resulting from the guidelines being unavailable does not unfairly preclude an applicant from continuing shipment of Source Plasma (Human) for noninjectable products, the Commissioner is extending the effective date for 60 days to July 11, 1977. In addition, the guidelines have been placed in the office of the Hearing Clerk (HFC–20), Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857 and are available upon request.

Concern was expressed by ABRA that some license application might be denied immediately before the deadline, thus precluding revision by the applicant to conform with FDA objections. The responsibility for filing approvable applications rests with the applicant. Several applications have been filed immediately prior to the deadline. Obviously, FDA cannot review and evaluate these applications within the remaining time. No extension of time would eliminate the problem of justified denial of applications coming close to the deadline for obtaining approval. The now extended July 11 date should eliminate all legitimate concerns about denials of inadequate applications.

Dated: May 12, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77–14107 Filed 5–16–77;8:45 am]

Health Resources Administration

NATIONAL ADVISORY COUNCIL ON HEALTH PROFESSIONS EDUCATION

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1977:

NAME: National Advisory Council on Health Professions Education.

DATE AND TIME: June 6–7, 1977, 8:30 a.m.

PLACE: Conference Room No. 6, Building 31, National Institutes of Health. 6th floor, C-Wing, 9000 Rockville Pike, Bethesda, Marylind 20014, Open for entire meeting.

PURPOSE: The Council advises the Secretary with respect to the preparation of general regulations and with respect to policy matters in the administration of programs of financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance.

AGENDA: The Council will meet in open session to review several drafts of program specifications prepared for use in the implementation of Pub. L. 94–484.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Ms. Lynn Stevens, Bureau of Health Manpower, Room 4–22, Federal Center Building No. 2, 3700 East West Highway, Hyattsville, Maryland 20782, Telephone (301) 436–6508.

Agenda items are subject to change as priorities dictate.

Dated: May 9, 1977.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc.77–14001 Filed 5–16–77;8:45 am]

National Institutes of Health

National Institute of Arthritis, Metabolism, and Digestive Diseases

NATIONAL DIABETES ADVISORY BOARD

Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the National Diabetes Advisory Board and its subcommittees, National Institute of Arthritis, Metabolism, and Digestive Diseases, May 19 and 20, 1977, Conference Room 4137, HEW North Building, and Rooms 7A24, 9A51 and 10A24, Building 31, National Institutes of Health, which was published in the FEDERAL REGISTER, April 27, 1977, 42 FR 21521.

Dated: May 11, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.77–14113 Filed 5–16–77;8:45 am]

Office of Education

NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION

Meeting

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. The meeting shall be open to the public. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463, Section 10(a)(2)).

DATES: June 9, 1977, 1:00 p.m. to 10:00 p.m., Committee Meetings; June 10, 1977, 8:00 a.m. to 9:30 p.m.; June 11, 1977, 8:00 a.m. to Noon.

ADDRESS: The Mills Hyatt House, Meeting and Queen Streets, Charleston, South Carolina 29401.

FOR FURTHER INFORMATION CONTACT:

Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult Education, 425 13th St., N.W., Washington, D.C. 20004 (202/376–8892).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under Section 311 of the Adult Education Act (80 Stat. 1216.20 U.S.C. 1201). The Council is directed to: Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Council shall be open to the public.

The proposed agenda includes: South Carolina Director's Report; Adult Education Act—Futures and Amendments; Lifelong Learning; USOE/RER Project; Committee Reports; Annual Report; FY–79 NACAE Budget; Election of Council Chairman and Vice Chairman, 4:00 p.m., June 10, 1977.

Records shall be kept of all Council proceedings, and shall be available for public inspection at the Office of the National Advisory Council on Adult Education, Room 323, Pennsylvania Bldg., 425 13th St., N.W., Washington, D.C., 20004.

Signed at Washington, D.C. on May 10, 1977.

GARY A. EYRE,
Executive Director, National Advisory Council on Adult Education.

[FR Doc.77–14035 Filed 5–16–77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. N–77–758]

DISCRETIONARY GRANTS IN BEHALF OF NEW COMMUNITIES

Dates for Submission of Applications for Fiscal Year 1977

AGENCY: Department of Housing and Urban Development.

ACTION: Notice.

SUMMARY: This notice sets the Fiscal Year 1977 deadline for requesting discretionary grants applicable to New Communities.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Warner, Office of New Communities, Telephone: 202–755–7523.

SUPPLEMENTARY INFORMATION: One February 27, 1976 (41 FR 8612), the Secretary amended the Community Development Block Grant regulations to include, among other things, application dates for requesting discretionary grants applicable to New Communities during Fiscal Year 1976, 24 CFR Part 570.400 (c) (2) (iii) (A). This notice simply updates that deadline for Fiscal Year 1977. A finding of inapplicability of the National Environmental Policy Act of 1969 has been made in accordance with HUD Handbook 1390.1. It is available for public inspection in the office of the Rules Docket Clerk, Room 10141, 451 7th Street SW., Washington, D.C., during normal business hours.

Accordingly, pursuant to this notice, applications for grants from the Secretary's Fund on behalf of New Communities under § 570.403 to be made from Fiscal Year 1977 funds will be accepted anytime during Fiscal Year 1977 (October 1, 1976 to close of business on September 30, 1977).

Issued at Washington, D.C., May 9, 1977.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development.

[FR Doc.77–14022 Filed 5–16–77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bonneville Power Administration

[INT DES 77–16]

BONNEVILLE DAM INTEGRATING TRANSMISSION

Notice of Availability of Draft Supplement to Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bonneville Power Administration has prepared a draft facility location supplement to its Fiscal Year 1978 Environmental Statement. This supplement covers the proposal for Bonneville Dam Integration Transmission.

Bonneville Dam Integrating Transmission involves the construction of transmission facilities to integrate the generation output of the second powerhouse at Bonneville Dam near the town of North Bonneville, Washington. The area under consideration lies in southwestern Washington in Clark and Skamania Counties.

Copies of the draft supplement are available for inspection in the library of the headquarters office of Bonneville Power Administration, 1002 NE. Holladay Street, Portland, Oregon 97232; the Washington, D.C., Office in the Interior Building, Room 5600; and at the Portland Area Office, Room 201, Lloyd Plaza Building, 919 NE. 19th Avenue, Portland, Oregon 97208.

Copies are also available at the following Government Depository Libraries:

GOVERNMENT DEPOSITORY LIBRARIES

IDAHO

Boise Public Library, Reference Department, 715 Capitol Blvd., Boise, Idaho 83706.
University of Idaho, Library—U.S. Documents, Moscow, Idaho 83834.
Documents Division, Idaho State University Library, Pocatello, Idaho 83209.
Boise State College Library, Boise, Idaho 83725.
Idaho State Library, 325 W. State Street, Boise, Idaho 83702.
Ricks College, David O. McKay Library, Rexburg, Idaho 83440.
Idaho State Law Library, Documents Librarian, Pocatello, Idaho 83201.
College of Idaho, Terteling Library, 2112 Cleveland Blvd., Caldwell, Idaho 83605.
College of Southern Idaho, Documents Library—Box 1238, 315 Falls Ave., Twin Falls, Idaho 83301.

MONTANA

Documents Librarian, Montana State University Library, Bozeman, Montana 59715.
University of Montana Library, Documents Division, Missoula, Montana 59081.

OREGON

Southern Oregon State College Library, Documents Section, Ashland, Oregon 97520.
Documents Division, William Jasper Kerr Library, Oregon State University, Corvallis, Oregon 97331.
University of Oregon Library, Documents Section, Eugene, Oregon 97403.
Harvey W. Scott Memorial Library, Pacific University, Forest Grove, Oregon 97116.
Eastern Oregon State College Library, Eighth at K, La Grande, Oregon 97850.
Northus Library, Linfield College, McMinnville, Oregon 97128.
Oregon College of Education Library, Monmouth, Oregon 97361.
Aubrey R. Watzek Library, Lewis and Clark College, Attention: Reference Department, 0615 SW. Palatine Hill Road, Portland, Oregon 97219.
Library Association of Portland, 801 SW. Tenth Avenue, Portland, Oregon 97205.
Documents Librarian, Portland State University Library, P.O. Box 1151, Portland, Oregon 97207.
Eric V. Hauser Memorial Library, Reed College, 3203 SE. Woodstock, Portland, Oregon 97202.
Oregon State Library, State Library Building, Salem, Oregon 97301.
Willamette University Library, 900 State Street, Salem, Oregon 97301.
Oregon Supreme Court Library, 12th and State Streets, Salem Oregon 97301.

WASHINGTON

Documents Division, Mable Zoe Wilson Library, Western Washington State College, 516 High Street, Bellingham, Washington 98225.
Documents Department, Victor J. Bouillon Library, Central Washington State College, Ellensburg, Washington 98926.
Everett Community College Library, 801 Wetmore Avenue, Everett, Washington 98201.
Documents Center, Washington State Library, Olympia, Washington 98501.
University of Puget Sound, Everill S. Collins Memorial Library, Tacoma, Washington 98416.
Eastern Washington State College, John F. Kennedy Memorial Library, Cheney, Washington 99004.
Evergreen State College, Daniel J. Evans Library, Olympia, Washington 98505.
Seattle Public Library, 1000 Fourth Ave., Seattle, Washington 98104.
University of Washington, School of Law Library, 300 Condon Hall, Seattle, Washington 98105.
Tacoma Public Library, 1102 Tacoma Ave. S., Tacoma, Washington 98402.
Everett Public Library, 2702 Hoyt Ave., Everett, Washington 98201.
North Olympic Library System, Library Service Center, 2210 S. Peabody, Port Angeles, Washington 98362.
Spokane Public Library, Comstock Bldg., W. 906 Main Ave., Spokane, Washington 99201.
Port Angeles Public Library, 207 S. Lincoln Street, Port Angeles, Washington 98362.

A limited number of copies are also available and may be obtained by writing to the Environmental Office, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208 or to the Portland Area Manager at the above address. Comments on the supplement should be sent to the Environmental Office by

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Dated: May 5, 1977.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

[FR Doc.77–14036 Filed 5–16–77;8:45 am]

Bureau of Land Management

ALASKA

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

MAY 9, 1977.

The U.S. Department of Agriculture, Forest Service, filed application Serial No. AA-3060, on July 24, 1968, for a withdrawal in relation to the following described lands:

CHUGACH NATIONAL FOREST, SEWARD MERIDIAN ALASKA

RUSSIAN RIVER RECREATION AREA

T. 5 N., R. 4 W., Seward Meridian (Protracted)
Sec. 33: fractional part of N½ between Kenai River on the north and Russian River on the south; NE¼SE¼ lying east of Russian River.
Sec. 34: that part of SW¼NE¼, NW¼, N½SW¼, NW¼SE¼ lying south of Kenai River and east of Russian River.
Containing approximately 340 acres.

COOPER LAKE RECREATION AREA

T. 4 N., R. 3 W., Seward Meridian (Protracted)
Sec. 36: SW¼SE¼ (fractional).
T. 3 N. R. 3 W., Seward Meridian (Protracted)
Sec. 1: W½ (fractional), W½E½.
Sec. 12: NW¼NE¼, N½NW¼ (fractional).
Containing approximately 375 acres.

JUNEAU FALLS RECREATION AREA

T. 5 N., R. 4 W., Seward Meridian (Protracted)
Sec. 13: SE¼SW¼, SW¼SE¼.
Sec. 24: W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼.
Containing approximately 320 acres.

The applicant desires that the land be reserved for three recreation areas within the Chugach National Forest.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on February 20, 1976, Volume 41, No. 35, Page 7795, Document No. 76-4875.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the State Director, Bureau of Land Management, 555 Cordova Street, Anchorage, Alaska 99501 on or before July 1, 1977. Notice of the public hearing will be published in the FEDERAL REGISTER, giving the time and place of such hearing. The hearing will be scheduled and conducted in accordance with BLM Manual Sec. 2351.16 B. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before July 1, 1977.

The above-described lands are temporarily segregated from the operation of the public land laws, including the mining and mineral leasing laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except for public hearing requests) in connection with the pending withdrawal application should be addressed to the Chief, Branch of Lands and Minerals Operations, Alaska State Office, Bureau of Land Management, Department of the Interior, 555 Cordova Street, Anchorage, Alaska 99501.

CURTIS V. MCVEE,
State Director.

[FR Doc.77-13961 Filed 5-16-77;8:45 am]

ALASKA

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

The U.S. Department of the Interior, Bureau of Reclamation filed application Serial No. AA-502, on October 19, 1966, for a withdrawal in relation to the following described lands:

T. 15 N., R. 2 E., Seward Meridian, Alaska
Sec. 7, NE¼SE¼, SE¼NE¼;
containing 80 acres.

The applicant desires that the land be reserved for protection, maintenance and operation of the Eklutna Hydroelectric Project.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on March 8, 1967, 32 FR 3839, document No. 67-2538.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the State Director, Bureau of Land Management, 555 Cordova Street, Anchorage, Alaska 99501 on or before June 15, 1977. Notice of the public hearing will be published in the FEDERAL REGISTER, giving the time and place of such hearing. The hearing will be scheduled and conducted in accordance with BLM Manual Sec. 2351.16 B. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before June 15, 1977.

The above-described lands are temporarily segregated from the operation of the public land laws, including the mining and mineral leasing laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will be not be affected by the temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except for public hearing requests) in connection with the pending withdrawal application should be addressed to the Chief, Branch of Lands and Minerals Operations, Alaska State Office, Bureau of Land Management, Department of the Interior, 555 Cordova Street, Anchorage, Alaska 99501.

CURTIS V. MCVEE,
State Director.

[FR Doc.77-13960 Filed 5-16-77;8:45 am]

[OR 8844]

OREGON

Order Providing for Opening of Public Land

MAY 10, 1977.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934, 48 Stat. 1269, 1272, as amended and supplemented, 43 U.S.C. 315g (1964), the following land has been reconveyed to the United States.

WILLIAMETTE MERIDIAN

T. 14 S., R. 44 E.,
Sec. 16, NE¼SW¼;
Sec. 22, S½NE¼;
Sec. 23, S½NW¼;
Sec. 27, SW¼NW¼ and NW¼SW¼;
Sec. 28, S½NE¼, SW¼SW¼, and SE¼;
Sec. 33, N½ and N¼SE¼;
Sec. 34, NW¼NW¼, S½NW¼, and NW¼SW¼.

The area described contains 1,120 acres in Baker County.

2. All minerals in the SW¼NW¼ and NW¼SW¼ of Sec. 27 and in the S½NE¼ and SE¼ of Sec. 28 were and continue to be in United States' ownership and open to operation of the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws.

3. The subject land is located in the southern portion of Baker County approximately 40 miles southeast of the City of Baker, Elevation ranges from 2,500 to 3,800 feet above sea level, and the topography is generally steep and rolling. Vegetation consists primarily of native grasses and sagebrush. In the past, the land has been for livestock grazing purposes, and it will be managed, together with adjoining national resource lands, for multiple use.

4. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the

land described in paragraph 1 hereof is hereby open (except as already provided in paragraph 2 hereof) to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws. All valid applications received at or prior to 10:00 a.m. June 15, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

VIRGIL O. SEISER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-13962 Filed 5-16-77;8:45 am]

[OR 7536]

OREGON

Order Providing for Opening of Public Land

MAY 10, 1977.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934, 48 Stat. 1269, 1272, an amended and supplemented, 43 U.S.C. 315g (1970), the following land has been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 1 N., R. 19 E.,
Sec. 2, that portion of NW¼SW¼, containing 10 acres, more or less, located north of the centerline of the John Day River;
Sec. 3, that portion of the N½SE¼, containing 10 acres, more or less, located north of the centerline of the John Day River;
Sec. 13, NW¼NW¼;
Sec. 14, NE¼NE¼ and that portion of the NW¼NE¼, containing 35 acres, more or less, located east of the centerline of the John Day River.

The area described contains 135 acres in Gilliam County.

2. The subject land is located adjacent to the John Day River approximately 27 miles northwest of the Town of Condon. Elevation ranges from 400 to 1,000 feet above sea level, and the topography varies from generally flat near the river to very rough and steep. Vegetation consists primarily of native grasses and sagebrush with some willows and poplars. In the past, the land has been used for livestock grazing purposes, and portions nearest the river also have outdoor recreational values. The land will be managed, together with adjoining national resource lands, for multiple use.

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the land described in paragraph 1 hereof is hereby open to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws. All valid applications received at or prior to 10 a.m. June 15, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

VIRGIL O. SEISER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-13963 Filed 5-16-77;8:45 am]

[OR 9300 (Wash.)]

WASHINGTON

Order Providing For Opening of Public Lands

MAY 10, 1977.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934, 48 Stat. 1269, 1272, as amended and supplemented, 43 U.S.C. 315g (1964), the following lands have been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 10 N., R. 31 E.,
Sec. 1, S½S½.
T. 10 N., R. 32 E.,
Sec. 7, lots 1 and 2, NE¼, and E½NW¼.

The areas described aggregate 463.31 acres in Franklin County.

2. The subject lands are located in the area known as the Juniper Forest approximately 14 miles northeast of the City of Pasco. Elevation ranges from 800 to 1,060 feet above sea level, and the topography is generally flat to rolling. Vegetation consists primarily of sagebrush, native grasses, and some western juniper. In the past, the lands have been used for livestock grazing purposes. The lands also have outdoor recreational values, and they will be managed, together with adjoining national resource lands, for multiple use.

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 hereof are hereby open to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws. All valid applications received at or prior to 10 a.m. June 15, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

VIRGIL O. SEISER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-13964 Filed 5-16-77;8:45 am]

QUALIFIED JOINT BIDDERS

List; Amendment

According to the regulations 43 CFR 3302.3-2(a), any person who wishes to submit a joint bid for an oil and gas lease under the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343) during the six month bidding period which began on May 1, 1977, must have filed no later than 45 days before that date a sworn statement of production covering the prior production period of July 1, 1976, through December 31, 1976. In order for the person to bid jointly without restriction, his statement should attest to an average daily production during that time of no more than 1.6 million barrels a day of crude oil, natural gas and liquified petroleum products.

Since March 17, 1977, a number of companies who had not timely-filed their statements of production have inquired as to whether an extension of time might be granted. It has now been determined that acceptance of statements of production up until the close of business on June 14, 1977, would be in the national interest and not incompatible with the purposes of the regulations. Therefore, any such sworn statements as to production of an average daily amount of less than 1.6 million barrels a day of crude oil, natural gas and liquified petroleum products during the applicable production period (July 1, 1976, through December 31, 1976) will be accepted by this office until the close of business on June 14, 1977, to qualify the person filing to bid jointly during the bidding period ending October 31, 1977.

GEORGE L. TURCOTT,
Acting Director, Bureau of Land Management.

MAY 11, 1977.

[FR Doc.77-14073 Filed 5-16-77;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 17, 1977. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by May 27, 1977.

JERRY L. ROGERS,
Chief, Office of Archeology and Historic Preservation.

ARIZONA

Coconino County

Flagstaff, *Bank Hotel*, Santa Fe and Leroux.

COLORADO

Baca County

Springfield, *Springfield Schoolhouse*, 281 W. 7th Ave.

Chaffee County

Buena Vista, *Grace Episcopal Church*, Main and Park Ave.

Costilla County

San Luis, *Plaza de San Luis de la* Culebra, CO 159.

Denver County

Denver, *Brinker Collegiate Institute,* 1725-27 Tremont Pl.
Denver, *Creswell Mansion,* 1244 Grant St.
Denver, *Enterprise Hill Historic District,* bounded roughly by Tremont, Welton, 20th, and 22nd sts.
Denver, *Humboldt Street Historic District,* Humboldt St. between E. 10th and E. 12th Aves.
Denver, *Ideal Building,* 821 17th St.
Denver, *Masonic Temple Building,* 1614 Welton St.
Denver, *Schleier, George, Mansion,* 1665 Grant St.
Denver, *Zang, Adolph, Mansion,* 709 Clarkson.

Garfield County

Glenwood Springs, *Hotel Colorado,* 526 Pine St.

Larimer County

Estes Park, *Stanley Hotel,* 333 Wonder View Ave.

Park County

Fairplay, *South Park Community Church,* 6th and Hathaway.

CONNECTICUT

Middlesex County

Middletown, *Williams, Capt. Benjamin, House,* 27 Washington St.

Windham County

Woodstock, *Bowen, Henry C., House,* CT 169.

GEORGIA

DeKalb County

Atlanta, *DeKalb Avenue-Clifton Road Archeological Site,* DeKalb Ave. between Clifton Rd. and Nelms St.

Polk County

Rockmart vicinity, *Rock Shelters,* S of Rockmart.

Sumter County

Andersonville vicinity, *Pennington-Horne Lithic Site,* E of Andersonville.

Upson County

Thomaston vicinity, *Minor, L. L., Archeological Site,* S of Thomaston.

GUAM

Inarajan, *Inarajan Village,* Rte. 4.

MARYLAND

Baltimore County

Catonsville, *Old Salem Church and Cemetery,* Ingleside Ave. and Calverton St.

Harford County

Fallston vicinity, *Bon Air,* S of Fallston.

Prince Georges County

Bowie, *Belair,* Tulip Grove and Belair Drives.

Washington County

Sharpsburg, *Belinda Springs Farm,* S of Sharpsburg off the Sharpsburg-Harpers Ferry Rd.

NEBRASKA

Dakota County

Homer vicinity, *O'Connor, Cornelius, House,* E of Homer.

Gage County

DeWitt vicinity, *DeWitt Flour Mills and King Iron Bridge,* E of DeWitt on Big Blue River.

PUERTO RICO

Arecibo vicinity, *Faro de Arecibo,* NE of Arecibo off Rte 686.
Arroyo vicinity, *La Iglesia Viega,* N of Arroyo on Rte 753.
San Juan, *El Capitolio de Puerto Rico,* Avenida Ponce de Leon and Avenida Munez Rivera.

SOUTH CAROLINA

Allendale County

Allendale vicinity, *Antioch Christian Church,* SW of Allendale on SC 3 off U.S. 301.

Lexington County

Lexington, *Berly, William, House,* 121 Berly St.

TEXAS

Harris County

Houston, *Ideson, Julia, Building,* 500 McKinney.

WISCONSIN

Columbia County

Portage, *Portage Canal,* between Fox and Wisconsin Rivers.

LaCrosse County

LaCrosse, *Laverty-Martindale House,* 237 S. 10th St.

Marathon County

Wausau, *Jones, Granville D., House,* 915 Grant St.

Milwaukee County

Milwaukee, *Machek, Robert, House,* 1305 N. 19th St.

Racine County

Racine, *Southside Historic District,* roughly bounded by Lake Michigan, DeKoven Ave., Villa, and 8th Sts.

Rock County

Janesville, *Court Street Methodist Church,* 36 S. Main St.

Waukesha County

Hartland vicinity, *Beaumont Hop House,* N of Hartland.

* * * * *

The commenting period for the following property will end on May 18, 1977.

TENNESSEE

Lauderdale County

Henning, *Palmer, W. E. House,* off U.S. 51.

[FR Doc.77-13721 Filed 5-16-77;8:45 am]

[Order No. 6]

MIDWEST REGION SUPERINTENDENTS, ET AL.

Delegation of Authority

SECTION 1. *Superintendents.* The National Park Service Superintendents of the Midwest Region, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority now or hereafter delegated to the Regional Director, Midwest Region, by the Director, National Park Service, except with respect to the following:

(a) Approval of master plans.

(b) Acceptance of an offer in settlement of a timber trespass unless (1) the trespass is an innocent one, (2) the damages therefrom do not exceed $5,000, and (3) payment of the full amount of the damages is offered.

(c) Sales of timber pursuant to the Federal Property and Administrative Services Act of 1949, and the Federal Property Management Regulations when the fair market value of the timber involved in any single transaction exceeds $1,000.

(d) Approval of programs for destruction and disposition of wild animals which are damaging the land or its vegetative cover, and of permits to collect rare or endangered species.

(e) Acceptance of donations of personal property valued in excess of $10,000, and acceptance of donations of money in excess of $10,000.

(f) Authority to designate areas at which recreation fees will be charged, as specified by the Land and Water Conservation Fund Act of 1965 (78 Stat. 987), as amended.

(g) Authority to select from the fees established by 43 CFR Part 18 (38 FR 3385), specific fees to be charged at the designated areas in accordance with the Land and Water Conservation Fund Act of 1965 (78 Stat. 987), as amended.

(h) Authority to execute, approve, and administer contracts and to issue purchase orders for equipment, supplies, and services as follows:

(1) Superintendents of Indiana Dunes National Lakeshore, Jefferson National Expansion Memorial, Ozark National Scenic Riverways, and Isle Royal National Park—in excess of $100,000.

(2) Superintendents of Apostle Islands National Lakeshore, Lincoln Home National Historic Site, Voyageurs National Park, Sleeping Bear Dunes National Lakeshore, St. Croix National Scenic Riverway, and Cuyahoga Valley National Recreation Area—in excess of $50,000.

(3) All other Superintendents in Midwest Region—in excess of $10,000.

(i) Authority with respect to the preservation of historical and archeological data (including relics and specimens) which might otherwise be lost as a result of the construction of a dam

(j) Authority to approve land acquisition priorities.

(k) Authority to execute the land acquisition program, including contracting for acquisition of lands and related property, and options and offers to sell related thereto.

(l) Authority to issue revocable special use permits having a term of more than 10 years.

(m) Authority to hire, rent, or purchase personal property from employees.

(n) Authority to conduct archeological investigations and salvage activities.

SECTION 2. Delegation.

(a) *Associate Regional Director, Administration.* The Associate Regional Director, Administration, is authorized to exercise all the procurement and contracting authority now or hereafter vested in the Regional Director, Midwest Region, except authority to contract for acquisition of land and related property, and options and offers to sell related thereto.

(b) *Regional Chief, Contracting and Property Management Division.* The Regional Chief, Contracting and Property Management Division, is authorized to exercise all the procurement and contracting authority now or hereafter vested in the Regional Director, Midwest Region, except authority to contract for acquisition of land and related property, and options and offers to sell related thereto.

(c) *Regional General Supply Specialist.* The Regional General Supply Specialist may execute and approve purchase orders and contracts not in excess of $10,000.

(d) *Chief Archeologist, Midwest Archeological Center.* The Chief Archeologist, Midwest Archeological Center, may execute, approve, and administer contracts and issue purchase orders in amounts not to exceed $10,000 for equipment, supplies, and services, excluding archeological investigations and salvage activities, in conformity with applicable regulations and subject to the availability of appropriated funds.

(e) *Staff Curator (Museum Management).* The Staff Curator (Museum Management) may issue purchase orders not in excess of $1,000 for museum or exhibit specimens and historic house furnishings in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

(f) *Chief, Division of Land Acquisition.* The Chief, Division of Land Acquisition, is authorized to:

(1) Approve and accept offers to sell to or exchange with the United States, lands or interests in lands, and to execute all necessary agreements and conveyances incident thereto.

(2) Accept deeds conveying to the United States lands or interests in lands.

(3) Approve on behalf of the National Park Service offers of settlement in condemnation cases.

(4) Approve claims for reimbursement under Public Law 91–646.

(g) *Field Land Acquisition Officers.* All Field Land Acquisition Officers are authorized to exercise authority with respect to the following:

(1) Approve and accept offers to sell to or exchange with the United States lands or interests in lands when the amount involved does not exceed $100,000.

(2) Accept deeds conveying to the United States lands or interests in lands.

(3) Approve claims for reimbursement under Public Law 91–646 when the amount involved does not exceed $5,000.

SECTION 3. *Redelegation.* The authority delegated in this order No. 6 may not be redelegated, except that a Superintendent may, in writing, redelegate to any officer or employee the authority delegated to him by this order and may authorize written redelegation of such authority. Each redelegation shall be published in the FEDERAL REGISTER.

SECTION 4. *Revocation.* This order supersedes Midwest Region Order No. 5, dated March 1, 1972, and published in 37 FR 6324–6325, as amended.

(National Park Service Order No. 77, 38 FR 7478 published March 22, 1973, as amended.)

Dated: February 25, 1977.

MERRILL D. BEAL,
Regional Director, Midwest Region.

[FR Doc.77–14048 Filed 5–16–77;8:45 am]

[Order No. 5, Amdt. No. 6]

SUPERINTENDENTS, ET AL., SOUTHEAST REGION

Delegation of Authority

Order No. 5, approved March 17, 1972, and published in the FEDERAL REGISTER April 19, 1972 (37 FR 7721) as amended, sets forth limitations on redelegations of contracting and procurement authority. This amendment revises paragraphs (c), (d), and (e) of Section 2 and adds paragraphs (i) and (j) to Section 2 as follows:

(c) *Assistant Chief, Contracting and Property Management Division.* The Assistant Chief, Contracting and Property Management Division, may execute and approve contracts not in excess of $500,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. This authority may be exercised by the Assistant Chief in behalf of any area administered by the Chief, Contracting and Property Management Division.

(d) *Contracting Specialist, Contracting and Property Management Division.* The Contracting Specialist may execute and approve contracts not in excess of $500,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds. This authority may be exercised by the Contracting Specialist in behalf of any area administered by the Chief, Contracting and Property Management Division.

(e) *Procurement Agent, Contracting and Property Management Division.* The Procurement Agent may execute and approve contracts not in excess of $50,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds. This authority may be exercised by the Procurement Agent in behalf of any area administered by the Chief, Contracting and Property Management Division.

(i) *Procurement Clerk, Contracting and Property Management Division.* The Procurement Clerk may execute and approve contracts not in excess of $10,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds. This authority may be exercised by the Procurement Clerk in behalf of any area administered by the Chief, Contracting and Property Management Division.

(j) *Management Assistant, Contracting and Property Management Division.* The Management Assistant may execute and approve contracts not in excess of $25,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds. This authority may be exercised by the Management Assistant in behalf of any area administered by the Chief, Contracting and Property Management Division.

(National Park Service Order No. 77 (38 FR 7478), published March 22, 1973, as amended.)

DAVID G. WRIGHT,
Acting Regional Director, Southeast Region.

Dated: February 4, 1977.

[FR Doc.77–14049 Filed 5–16–77;8:45 am]

[Order No. 5, Amendment No. 6]

CHIEF, DIVISION OF CHACO RESEARCH, SOUTHWEST CULTURAL RESOURCES CENTER

Delegation of Authority

Southwest Region Order No. 5, approved March 22, 1972, and published in the FEDERAL REGISTER of April 19, 1972 (37 FR 7722) as amended, is hereby amended to read as follows:

Section 2. Delegation.

(l) Chief Division of Chaco Research, Southwest Cultural Resources Center. The Chief, Division of Chaco Research may issue purchase orders not in excess of $2,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

(National Park Service Order No. 77 (38 FR 7478, as amended.)

Dated: February 17, 1977.

JOHN E. COOK,
Regional Director, Southwest Region.

[FR Doc.77–14050 Filed 5–16–77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–30]

DISPLAY DEVICES FOR PHOTOGRAPHS AND THE LIKE

Order Continuing Preliminary Conference

The preliminary conference in the above styled proceeding which was noticed for Monday, May 16, 1977 (42 FR 24120, May 12, 1977), is hereby continued until 10 a.m. on Thursday, May 26, 1977.

The Secretary shall serve a copy of this Order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued: May 12, 1977.

Judge MYRON R. RENICK,
Presiding Officer.

[FR Doc.77–14083 Filed 5–16–77;8:45 am]

[Investigation No. 337–TA–32]

DOT MATRIX IMPACT PRINTERS

Order Continuing Preliminary Conference

The preliminary conference in the above styled proceeding which was noticed for May 18, 1977 (42 FR 24120, May

12, 1977), is hereby continued until 2:00 p.m. on June 2, 1977.

The Secretary shall serve a copy of this Order upon all parties of record, and shall publish it in the FEDERAL REGISTER.

Issued: May 12, 1977.

Judge MYRON R. RENICK,
Presiding Officer.

[FR Doc.77-14082 Filed 5-16-77;8:45 am]

[Investigation No. 337-TA-34]

NUMERICALLY CONTROLLED MACHINING CENTERS, AND COMPONENTS THEREOF

Investigation

Notice is hereby given that a complaint was filed with the United States International Trade Commission on April 14, 1977, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) on behalf of the Burgmaster Division, Houdaille Industries, Inc. (hereinafter "Burgmaster" or "complainant") 13900 South Broadway, Los Angeles, California 90061, alleging that unfair methods of competition and unfair acts exist in the importation of certain machining centers with automatic tool changers (hereinafter "Numerically Controlled Machining Centers") into the United States, or in their sale, by reason of (1) the alleged coverage by claims 1 and 2 of U.S. Letters Patent 3,891,910 of a tool offset feature in the numerical control unit for the numerically controlled machining centers, (2) the alleged unfair use of know-how and trade secrets relating to the machining center unit of said machining centers, and (3) the unfair use of Houdaille's trademark "BURGMASTER" in the promotion and sale of the numerically controlled machining centers. The complaint further alleges that the effect or tendency of each of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Complainant requests that the imports in question be both temporarily and permanently excluded from entry into the United States.

Having considered the complaint, the United States International Trade Commission, on May 11, 1977, determined that the complaint was properly filed and therefore has, that same day, Ordered—

(1) that, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine, under subsection (c), whether, on the basis of the allegations set forth in the complaint and the evidence adduced, there is a violation or reason to believe there is a violation of subsection (a) of this section in the importation of certain numerically controlled machining centers, and components thereof, including but not limited to—

(i) numerical control units for such numerically controlled machining centers, and,

(ii) machining centers units for such numerically controlled machining centers

into the United States, or in their sale, by reason of (A) a tool offset feature incorporated in the numerical control units allegedly being covered by claim 1 or 2 of U.S. Patent 3,891,910, (B) the alleged unfair use of know-how and trade secrets relating to the machining center units, and (C) the alleged deceptive practices used in the promotion and sale of the numerically controlled machining center such as unfair use of Houdaille's trademark "BURGMASTER," the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) That, for the purpose of the investigation so instituted the following persons, alleged to be involved in the unauthorized importation of such articles into the United States, or in their sale, are hereby named as respondents upon which the complaint and this notice are to be served:

FOREIGN MANUFACTURER

Yamazaki Machinery Works, Ltd., 1 Norifune, Oguchi-Cho, Niwa-Gun, Aichi-Pref., Japan.

DOMESTIC IMPORTER

Yamazaki Machinery Corporation, 8025 Production Drive, Florence, Kentucky 41042.

(3) That, for the purpose of the investigation so instituted, Judge Myron R. Renick, United States International Trade Commission, 701 E Street NW., Washington, D.C., 20436, is hereby appointed as Presiding Officer; and

(4) That, for the purpose of the investigation so instituted Steven D. Moskowitz, United States International Trade Commission, 701 E Street NW., Washington, D.C., 20436, is hereby named as Commission Investigative Attorney.

Responses must be submitted to the parties in accordance with section 210.21 of the Commission's Rules of Practice and Procedure, as amended (41 F.R. 17710, Apr. 27, 1976). Pursuant to sections 201.16(d) and 210.21(a) of the Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and of this notice, and will authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination, respectively, containing such findings.

The complaint, with the exception of confidential information referred to therein, is available for inspection by interested persons at the Office of the Secretary, United States International Trade Commission Building, Washington, D.C., and in the New York City office of the Commission, 6 World Trade Center.

Issued: May 12, 1977.

By order of the Commission:

KENNETH R. MASON,
Secretary.

[FR Doc.77-14081 Filed 5-16-77;8:45 am]

[Investigation No. 337-TA-31]

STEEL TOY VEHICLES

Order Continuing Preliminary Conference

The preliminary conference in the above styled proceeding which was noticed for May 17, 1977 (42 FR 24120, May 12, 1977), is hereby continued until 1:00 p.m., May 18, 1977.

The Secretary shall serve a copy of this Order upon parties of record and shall publish it in the FEDERAL REGISTER.

Issued May 12, 1977.

Judge MYRON R. RENICK,
Presiding Officer.

[FR Doc.77-14084 Filed 5-16-77;8:45 am]

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

ADVISORY COMMITTEE ON JOINT BOARD ACTUARIAL EXAMINATIONS

Meeting

Notice is hereby given that the Advisory Committee on Joint Board Actuarial Examinations will meet in the Continental Plaza Hotel, North Michigan at Delaware, Chicago, Illinois on June 9, 1977 at 9:00 a.m.

The purposes of the meeting are to discuss topics, syllabi and questions which may be recommended for inclusion in the Joint Board's examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B); to review other actuarial examinations in order to make recommendations regarding such examinations' adequacy to demonstrate the education and training in actuarial mathematics and methodology required for enrollment by Title 29 U.S. Code, section 1242(a)(1); and to review college degree programs in order to make recommendations regarding such programs' equivalence to programs leading to degrees in actuarial mathematics within the meaning of Title 29 U.S. Code, section 1242(a)(1)(A).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the portion of the meeting dealing with discussion of questions which may appear on the Joint Board's examinations will fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public in-

terest requires that such portion be closed to public participation.

The portion of the meeting dealing with examination topics and syllabi, other actuarial examinations, and college degree programs will commence at approximately 1:30 p.m. and will be open to the public as space is available. Time permitting, after discussion of agenda subjects by Committee members, interested persons may make statements germane to these subjects. Persons wishing to make oral statements should advise the Committee Management Officer in writing prior to the meeting to aid in scheduling the time available and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be restricted to ten minutes in length. Any interested person may file a written statement for consideration by the Committee by sending it to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, D.C. 20220.

LESLIE S. SHAPIRO,
Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc.77-14026 Filed 5-16-77;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

M.D. PHARMACEUTICAL, INC.

Manufacture of Controlled Substances; Registration

By Notice dated February 4, 1977, and published in the FEDERAL REGISTER on February 11, 1977, (42 FR 8725), M.D. Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application on January 17, 1977, to the Drug Enforcement Administration (DEA), to be registered as a bulk manufacturer of diphenoxylate and methylphenidate, each being a basic class of controlled substance listed in Schedule II.

By a letter dated March 14, 1977, counsel for Ciba-Geigy Corporation submitted the comments and objections of that company in response to the above notice. Ciba-Geigy objected to the registration of M.D. Pharmaceutical, Inc. for the reasons that:

1. M.D. Pharmaceutical does not hold a New Drug Application (NDA) approved by the Food and Drug Administration and thus lacks the authority to manufacture and market methylphenidate for interstate commerce, and in view of that deficiency, should not be granted a manufacturer's registration by DEA.

2. The policy of the Drug Enforcement Administration, at least regarding the registration of importers, is that it is unnecessary and administratively burdensome to presently register applicants as a contingency measure in the event they may possibly conduct controlled substances activities in the future, and therefore to register M.D. Pharmaceutical in advance of their ability to manufacture methylphenidate for marketing is to contravene DEA's own policy.

The first objection raised by Ciba-Geigy regarding no approved NDA has been previously considered by this agency in "In the Matter of MBH Chemical Corp.," Dk 73-17, 73-18, 30 FR 12364-65, April 5, 1974. That proceeding was a hearing before Administrative Law Judge William E. Brennan on an application submitted by MBH Chemical Corp. to become registered as a manufacturer of two Schedule II controlled substances, one of which was methylphenidate. The issue presented in that case was whether the Administrator may, pursuant to 21 U.S.C. 823, register an applicant to manufacture a Schedule II controlled substance where it is a New Drug under the Federal Food, Drug, and Cosmetic Act and the applicant does not hold an approved NDA as that Act requires.

Upon consideration of that issue, in his final order in the MBH matter the then Administrator of the Drug Enforcement Administration granted the application for registration recognizing that the agency had no regulation which made obtaining an approved NDA a condition precedent to the issuing of a registration to manufacture controlled substances, and he stated in that order that he was granting the registration even though it remained unclear to him what benefits could be gained by registering an applicant who lacked an approved NDA for the drug they sought to manufacture.

In the present matter, as in the MBH matter, the nature of the application, the objection raised, the issue presented, and even the objector and the drug involved, are identical. Moreover, there continues to be no DEA regulation requiring an applicant to hold an approved NDA as a condition precedent to it obtaining a registration to manufacture.

Therefore, the Administrator similarly regards M.D. Pharmaceutical's lack of an approved NDA for methyphenidate to be no bar to DEA granting their application as a bulk manufacturer of that drug.

Ciba-Geigy's second objection is that DEA has a policy against registering applicants as importers who do not presently engage in importing activities but who may wish to do so in the future. Ciba-Geigy suggests that this policy should be extended to preclude registering an applicant as a manufacturer where he cannot for lack of an approved NDA engage in that activity.

The policy as set forth in 40 FR 43745-46 (September 23, 1975) stated that 21 U.S.C. 958(h) permits an applicant for registration as an importer to be expeditiously registered by DEA without the customary publication or advance notice of its application or opportunity for a hearing, provided there is an emergency situation as described in 21 U.S.C. 952(a) concerning the domestic unavailability of controlled substances. In view of that, the then Acting Administrator made a determination in the September 23, 1975 policy statement that a "contingency reserve" of importer registrants is "unnecessary and administratively burdensome" because it is as to them only that the statute provides for expeditious registration in emergency situations concerning the domestic supply of controlled substances, and in doing so eliminates their need for anticipatory registration.

It is the absence of this or a similar statutory provision as to manufacturer applicants which preserves their need to register in anticipation of their ability to manufacture, and which precludes extending to them the DEA policy against anticipatory registration of importers.

For the foregoing reasons, the application submitted by M.D. Pharmaceutical, Inc. dated January 17, 1977 shall be granted.

No other comments or objections having been received and no hearings having been requested, and pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and 21 CFR 1301.54(e), the Administration hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of diphenoxylate and methylphenidate is granted.

Dated: May 11, 1977.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc.77-14020 Filed 5-16-77;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

ALASKA STATE STANDARDS

Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the FEDERAL REGISTER (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

In response to Federal standards changes, the State has submitted by letter dated November 10, 1976, from Edmund L. Orbeck, Commissioner, to

James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards comparable to 29 CFR 1910.1001(l)(1), Asbestos Record keeping—Exposure Records, as published in the FEDERAL REGISTER, 36 FR 23207, dated December 7, 1971, and amendments to 29 CFR 1910.1001(l)(1), dated March 19, 1976, 41 FR 11505.

These State standards, which are contained in Subchapter 4 Alaska Occupational Safety and Health Code, were promulgated after public notice under authority vested by AS 18.60.020 by Edmund Orbeck, Commissioner, on September 29, 1976.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly are approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003 Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99801; and the Technical Data Center, Occupational Safety and Health Administration, New Department of Labor Building, Room N-3620 200 Constitution Avenue, Washington, D.C. 20210.

4. *Public participation.* Section 1953.2 (c) of this chapter provides that where State standards are identical to or "at least as effective" as comparable Federal standards and have been promulgated in accordance with State law, approval may be effective upon publication without an opportunity for further public participation. As the standards under consideration are identical to the Federal standards and have been promulgated in accordance with State law including an opportunity for public comment and/or a public hearing, they are approved without an opportunity for further public comment.

This decision is effective May 17, 1977.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Seattle, Washington this 9th day of March, 1977.

JAMES W. LAKE,
Regional Administrator, OSHA.

[FR Doc.77-14099 Filed 5-16-77;8:45 am]

NATIONAL COMMISSION ON THE OBSERVANCE OF INTERNATIONAL WOMEN'S YEAR

IDAHO WOMEN'S MEETING

Notice of Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1), announcement is made of the Idaho Women's Meeting to be held on May 20-22, 1977, in Boise at Boise State University.

The purposes of the meeting are to:

(1) recognize the contributions of women to the development of our country;

(2) assess the progress that has been made to date by both the private and public sectors in promoting equality between men and women in all aspects of life in the United States;

(3) assess the role of women in economic, social, cultural, and political development;

(4) assess the participation of women in efforts aimed at the development of friendly relations and cooperation among nations and to the strengthening of world peace;

(5) identify the barriers that prevent women from participating fully and equally in all aspects of national life, and develop recommendations for means by which such barriers can be removed;

(6) make nominations for and elect 14 representatives to the National Women's Conference in accordance with regulations promulgated by the National Commission on the Observance of International Women's Year and consistent with the requirement that the National Women's Conference shall be composed of:

(a) representatives of local, State, regional, and national institutions, agencies, organizations, unions, associations, publications, and other groups which work to advance the rights of women; and

(b) members of the general public, with special emphasis on the representation of low-income women, members of diverse racial, ethnic, and religious groups, and women of all ages.

The meeting is scheduled to begin at 12 noon on May 20, 1977, and end at 1:15 p.m. on May 22, 1977.

Workshops and other discussions have been scheduled for 9:15 a.m. to 11:30 a.m., Saturday, May 21, 1977; 1:30 p.m. to 3:45 p.m., Saturday, May 21, 1977; and 8:45 a.m. to 11:00 p.m., Sunday, May 22, 1977.

Topics to be discussed during these periods include:

Rights of Homemakers, Rural Women, International Interdependence, Health, and other issues relating to the education, employment, welfare, and legal rights of women.

The election of delegates to the National Women's Conference is scheduled as follows:

Nominating Committee Report and Floor Nominations: 7:00 p.m. to 8:15 p.m., Friday, May 20, 1977.

Election of delegates: 12 noon to 8:30 p.m., Saturday, May 21, 1977.

This meeting is open to the public. All persons 16 years old or over who are residents of the State or enrollees at educational institutions in the State may register to participate in all activities. Participation in some activities may be limited by the available space.

Registration is premised upon a satisfactory showing of residency or educational institution enrollment and the payment of a nominal fee. All participants may vote on recommendations and delegates if they have registered before 12 noon Saturday, May 21, 1977.

All communications regarding this Meeting should be addressed to Hope Kading, Chairperson, International Women's Year Coordinating Committee, 1515 W. Franklin, Boise, Idaho 83702, or call (800) 632-5931.

General Notice of this meeting has been publicized in the media and the time available for organizing the details of the program schedule have made it necessary on an emergency basis to postpone publication of this notice until this time.

Dated: May 11, 1977.

LINDA COLVARD DORIAN,
General Counsel, National Commission on the Observance of International Women's Year.

[FR Doc.77-14046 Filed 5-16-77;8:45 am]

NATIONAL ENDOWMENT FOR THE ARTS AND THE HUMANITIES

COLLEGE LIBRARY PROGRAM PANEL ADVISORY COMMITTEE

Meeting

MAY 9, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a meeting of the College Library Program Panel will convene at 9:00 a.m. in room 1023 at 806 Fifteenth Street NW., Washington, D.C. on June 10, 1977.

The purpose of the meeting is to review College Library applications submitted to the National Endowment for the Humanities for grants to educational institutions and nonprofit organizations.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 Fifteenth Street N.W., Washington, D.C. 20506, or call area code 202-382-2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.77-13999 Filed 5-16-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY COUNCIL, TASK GROUP 2

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Task Group 2 of the NSF Advisory Council.
Place: Room 421, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.
Date: June 2–3, 1977.
Time: 9 a.m. each day.
Type of meeting: Open.
Contact person: Dr. R. Lynn Carroll, NSF Staff Liaison—Advisory Council, National Science Foundation, Room 527, Washington, D.C. 20550. Telephone: 202–632–7443.
Purpose of task group: The purpose of the Task Group, composed of members of the NSF Advisory Council, is to provide the full Council with a mechanism to consider numerous issues of interest to the Council that have been assigned by the National Science Foundation.
Summary minutes: May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, Room 248, National Science Foundation, Washington, D.C. 20550.
Tentative agenda: June 20–21: To identify and review the ways non-scientists now participate in the formation of the nation's science policy, the present arrangements for involving the public in the development of Foundation policies, and suggest possible new approaches or improvements in NSF practices.

M. REBECCA WINKLER,
Acting Committee Management Officer.

MAY 11, 1977.

[FR Doc.77–13955 Filed 5–16–77;8:45 am]

MINORITY PROGRAMS IN SCIENCE EDUCATION ADVISORY COMMITTEE

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Minority Programs in Science Education.
Date: June 2–3, 1977.
Time: 9:00 a.m. each day.
Place: Room 651, 5225 Wisconsin Avenue, NW., Washington, D.C.
Type of meeting: Open.
Contact person: Ms. Fran Watts, Staff Assistant, Science Education Directorate, National Science Foundation, Room W–600, Washington, D.C. 20550, Telephone 202–282–7930.
Summary minutes: May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, National Science Foundation, Room 248, Washington, D.C. 20550.
Purpose of advisory committee: To assist in the evaluation and assessment of activities within the Minority Centers for Graduate Education Program and other ethnic minority-focused Foundation programs.

Agenda: *June 2*

Report on Grants for Minority Centers for Graduate Education in Science and Engineering.
Research Initiation in Minority Institutions Program.
NSF Graduate Fellowship Program and the Minority Fellowship Program.
State of the Art of Science and Engineering Education for Minorities.
Differential Aprpoaches for Funding and Identification.

June 3

Workshop on Proposal Writing for Smaller Institutions.
Released Time for Minority Faculty in Science and Engineering.

M. REBECCA WINKLER,
Acting Committee Management Officer.

MAY 11, 1977.

[FR Doc.77–13954 Filed 5–13–77;8:45 am]

RESEARCH IN SCIENCE EDUCATION (RISE) SUBPANEL

Meeting

Name: Subpanel for Research in Science Education (RISE) of the Advisory Panel for Science Education Projects.
Date and time: June 1 through June 7, 1977—9 a.m. to 6 p.m. each day.
Place: Sheraton Park Hotel and Motor Inn, 2660 Woodley Road, NW., Washington, D.C. 20008.
Type of meeting: Closed.
Contact person: Dr. Richard West, Program Director, RISE Program, Room W–648, National Science Foundation, Washington, D.C. 20550, telephone 202–282–7745.
Purpose of panel: To provide advice and recommendations concerning support for research in science education.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: Two proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Acting Committee Management Officer.

MAY 11, 1977.

[FR Doc.77–13956 Filed 5–16–77;8:45 am]

VERY LARGE ARRAY AD HOC ADVISORY PANEL

Open Meeting

In accordance with the Federal Advisory Committee Act. Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Ad Hoc Advisory Panel for the Very Large Array.
Date: June 1–2, 1977.
Time: 9:30 a.m. each day.
Place: National Radio Astronomy Observatory, Very Large Array (VLA) Site, U.S. Highway 60 and State Highway 78, Socorro County, New Mexico, (52 miles west of Socorro, New Mexico).
Type of meeting: Open.
Contact person: Mr. Claud M. Kellett, Executive Secretary, Ad Hoc Advisory Panel for the Very Large Array, Room 618, National Science Foundation, Washington, D.C. 20550, Telephone (202) 632–7340. Anyone who plans to attend should notify Mr. Kellett prior to the meeting.
Summary minutes: May be obtained from the Committee Management Coordination Staff, Management Analysis Office, Room 248, National Science Foundation, Washington, D.C. 20550.
Purpose of advisory panel: To advise the Director of the National Science Foundation concerning the management and future planning of the Very Large Array (VLA) Project of the National Radio Astronomy Observatory.

SUMMARY AGENDA

Time	*June 1*
9:30 a.m.	Introductory Remarks.
9:45 a.m.	VLA Site Tour.
12:30 p.m.	Recess.
1:30 p.m.	Review of VLA Technical Design and Scientific Goals.
4:30 p.m.	Adjourn.
	June 2
9:30 a.m.	Discussion of Program Management Details.
10:45 a.m.	Break.
11 a.m.	Continued Discussion of Program Management.
12:30 p.m.	Recess.
1:30 p.m.	Long Range Planning.
4:30 p.m.	Adjourn.

M. REBECCA WINKLER,
Acting Committee Management Officer.

MAY 11, 1977.

[FR Doc.77–13957 Filed 5–16–77;8:45 am]

ADVISORY PANEL FOR THE INFORMATION DISSEMINATION FOR SCIENCE EDUCATION PROGRAM (IDSE)

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

NAME: Advisory Panel for the Information Dissemination for Science Education Program (IDSE).

DATE AND TIME: June 2, 1977—6:00 p.m.–9:30 p.m.; June 3, 1977—8:30 a.m.–5:00 p.m.; June 4, 1977—8:30 a.m.–5:00 p.m.

PLACE: Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, D.C.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Charles W. Wallace, Program Director, IDSE, Room W–422, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 282–7950.

PURPOSE OF PANEL: To provide advice and recommendations concerning support for research in the IDSE program.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a

proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc.77–14037 Filed 5–16–77;8:45 am]

SUBPANEL ON THE HANDICAPPED IN SCIENCE PROGRAM OF THE ADVISORY PANEL ON SCIENCE EDUCATION PROJECTS

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

NAME: Subpanel on the Handicapped in Science Program of the Advisory Panel on Science Education Projects.

DATE AND TIME: June 2 and 3, 1977—9:00 a.m. to 5:00 p.m. each day.

PLACE: Metropolitan Hotel, 1143 New Hampshire Avenue NW., Washington, D.C. 20037.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Lafe R. Edmunds, Student-Oriented Programs, Room W–400, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 282–7150.

PURPOSE OF PANEL: To provide advice and recommendations concerning support for research in the Handicapped in Science Program.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc.77–14038 Filed 5–16–77;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on May 9, 1977, (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of management and Budget, Washington, D.C. 20503, (202–395–4529), or from the reviewer listed.

NEW FORMS

FEDERAL RESERVE SYSTEM

Registration Statement, Deregistration Statement, Annual Report, G–1, G–2, G–4, single time, persons who make stock secured loans, C. Louis Kincannon, 395–3211.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Center for Education Statistics, Oakland Unified School Mail-back Survey, Oakland Catholic Schools Mail-back Survey, ASE–1010–1 and 2, single time, parents of elementary-secondary students in Oakland, Calif., Sunderhauf, M. B., 395–6140.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development, Evaluation of Housing Assistance Plans: Field Interview, Field Interview Guides, single time, local government agencies, Housing, Veterans, and Labor Division, C. Louis Kincannon, 395–3532.

DEPARTMENT OF LABOR

Employment and Training Administration, a Pilot Evaluation of the Impact of U.S. Employment Service, Single Time, ES applicants, Strasser, A., C. Louis Kincannon, 395–5867.

REVISIONS

VETERANS ADMINISTRATION

Application for Medical Benefits for Dependents or Survivors, VA 10–10D, on occasion, Ind. eligible for CHAMPVA or VA Specialized medical care benefits, Warren Topelius, 395–5872.

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service, June Enumerative Survey, annually, farmers, Gaylord Worden, 395–4730.

Agricultural Stabilization and Conservation Service, Uniform Grain Storage Agreement, CCC–25 and 25–2, on occasion, warehousemen, Lowry, R. L., 395–3772.

Agricultural Stabilization and Conservation Service, Uniform Rice Storage Agreement, CCC–26–2, on occasion, warehousemen, Lowry, R. L., 395–3772.

Statistical Reporting Service, Telephone, Electric and L.P. Gas Service, none, annually, farmers, Gaylord Worden, 395–4730.

REVISIONS

Food and Nutrition Service:

Meal Service Application for Authorization to Participate, in the Food Stamp Program, FNS–252, FNS 252–1, through 252–4, on occasion, retail and wholesale food stores, and meal services, Warren Topelius, 395–5872.

Regulations—Special Supplemental Food Program for Women, Infants and Children (WIC), on occasion, State health department and local health or welfare agencies, Warren Topelius, 395–5872.

DEPARTMENT OF DEFENSE

Departmental and other Service Academies Precandidate Questionnaire, 1908, on occasion, prospective candidates to service academies, Warren Topelius, 395–5872.

DEPARTMENT OF LABOR

Bureau of Labor Statistics, Retail Prices: Rent Collection, Segment Listing; Tenure Screening, BLS 2921A, BLS 2921B, BLS 2921C, BLS 2921D, monthly, retail units, Strasser, A., 395–5867.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service, Sales Memorandum and Record of Peanuts Dried or Shelled for Producers, MQ70, on occasion, peanut buyers, dryers and shellers, Warren Topelius, 395–5872.

DEPARTMENT OF COMMERCE

Bureau of Census, Current Population Survey Questionnaire, CPS–1, monthly, CPS household respondents, George Hall, 395–6140.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration, Recordkeeping Requirements for Low-acid Canned Food Processors, on occasion, low-acid canned food processors, Warren Topelius, 395–5872.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Management:

Temporary Housing Insurance Certification, HUD 9968, on occasion, victims of Presidentially declared disasters, Housing, Veterans and Labor Division, 395–3532.

Notice of Intent To Vacate, HUD-9974, on occasion, victims of Presidentially declared disasters, Housing, Veterans and Labor Division, 395-3532.

Preplacement Questionnaire—Temporary Housing Assistance, HUD 9961, on occasion, victims of Presidentially declared disasters, Housing, Veterans and Labor Division, 395-3532.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-14159 Filed 5-16-77;8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on May 6, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

U.S. COMMISSION ON CIVIL RIGHTS

Equal Employment Opportunity in Salt Lake Justice, agencies, single time, 10 employees at 5 government agencies, Kathy Wallman, Tracey Cole, 395-6140.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Aspen Cable and Television Workshop Participant and User Survey, single time, participants in the Aspen cable and TV workshop, C. Louis Kincannon, 395-3211.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Management, Report of Tenants Accounts Receivable, HUD-52295, quarterly, Phas Unders Accs, Housing, Veterans and Labor Division, 395-3532.

DEPARTMENT OF THE INTERIOR

Bureau of Sport Fisheries and Wildlife, questionnaire on the Ecological Characterization of Coastal Maine, single time, government and other groups concerned with coastal ecology, Ellett, C.A., 395-5867.

EXTENSIONS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Management: Model Form of Operating Budget and Schedule Carrying Charge, HUD-93240, on occasion, low and moderate income households, Housing, Veterans and Labor Division, 395-3532.

Notice of Default Status on Multifamily Housing Projects, HUD-92426, on occasion, mortgagees, Housing, Veterans and Labor Division, 395-3532.

Request for Adaptation of Mobile Unit, HUD-9983, on occasion, victims of presidentially declared disaster, Housing, Veterans and Labor Division, 395-3532.

Damage Assessment for Temporary Housing Assistance, HUD-9958, on occasion, victims of presidentially declared disasters, Housing, Veterans and Labor Division, 395-3532.

Change of Information Record temporary Housing Assistance, HUD-9962, on occasion, victims of presentially declared disasters, Housing, Veterans and Labor Division, 395-3532.

Priority Consideration Request, HUD-9976, on occasion, victims of presidentially declared disasters, Housing, Veterans and Labor Division, 395-3532.

Notice of Intent to Vacate, HUD-9974, on occasion, victims of presidentially declared disasters, Housing, Veterans and Labor Division, 395-3532.

Temporary Housing Insurance Certification, HUD-9968, on occasion, victims of presidentially declared disasters, Housing, Veterans and Labor Division, 395-3532.

Request For Transient Accommodations, HUD-9969, on occasion, victims of presidentially declared disasters, Housing, Veterans and Labor Division, 395-3532.

Comparative Analysis of Utility Costs, HUD-51994A, HUD-51994B, HUD-51994C, HUD-51994D, on occasion, public housing agencies, Housing, Veterans and Labor Division, 395-3532.

DEPARTMENT OF THE INTERIOR

Bureau of Mines:

Estimate of Preliminary Annual Production, 6-1209-A, annually, producers of metals and nonmetals, C. Louis Kincannon, 395-3211.

Crude Perlite, 6-1298-A, annually, producers of crude perlite, C. Louis Kincannon, 395-3211.

Magnesium Compounds, Ores and Raw Materials (Production), 6-1232-A, annually, producers of magnesium compounds, C. Louis Kincannon, 395-3211.

Expanded Perlite (Production and Disposition), 6-1299-A, annually, producers of expanded perlite, C. Louis Kincannon, 395-3211.

Diatomite (Sales and Consumption), 6-1202-A, annually, producers of diatomite, C. Louis Kincannon, 395-3211.

Iron and Steel Scrap, Metallized Iron, and Pig Iron—Consumers, monthly report, M33-AM, monthly, consumers of iron and steel scrap, C. Louis Kincannon, 395-3211.

Pumice, Pumicite, Scoria, Volcanic Cinders, et cetera (Production), 6-1204-A, annually, producers of pumice and pumicite, C. Louis Kincannon, 395-3211.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-14158 Filed 5-16-77;8:45 am]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

ADVISORY GROUP ON SPACE SYSTEMS

Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that the establishment of the Advisory Group on Space Systems is necessary, appropriate, and in the public interest in connection with the performance of the duties imposed upon the Director, Office of Science and Technology Policy (OSTP) by the National Science and Technology Policy, Organization, and Priorities Act of 1976. This determination follows consultation with the Office of Management and Budget (OMB), pursuant to section 9(a)(2) of the Federal Advisory Committee Act and OMB Circular No. A-63, Revised.

1. Name of group. Advisory Group on Space Systems.

2. Purpose. The Office of Science and Technology Policy, in accordance with the statutory mandate to analyze and interpret significant developments and trends in science and technology and relate these to their impact on achievement of national goals and objectives will be identifying and evaluating the implications of technological advances such as the availability of the reusable space shuttle and other supporting systems on future space applications programs, specifically those related to national security.

The work of the Advisory Committee will be based upon inputs from the relevant departments and earlier work carried out by other organizations in the Executive Branch. The Advisory Committee will consider both the implications for policy and potential R&D opportunities and initiatives that may be appropriate to exploit advances that may be identified. The Committee will submit a report and briefing for appropriate officials in the Executive Branch upon completion of its activities.

3. Effective date of establishment and duration. The Advisory Committee is established to provide advice to the Director of the Office of Science and Technology Policy and is estbalished until October 1, 1977.

4. Membership. The membership of the Advisory Group on Space Systems shall be fairly balanced in the terms of the points of view represented and the group's function. Membership of the Advisory Group on Space Systems will consist of approximately eight members drawn from the private sector who are particularly knowledgeable in the areas of interest to the group.

5. Advisory group operation. The Advisory Group on Space Systems will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463), OSTP policy and procedures, OMB Circular No. A-63, Revised, and other directives and instructions issued in implementation of the Act.

R. C. DREW,
Assistant Director.

[FR Doc.77-14211 Filed 5-16-77;9:16 am]

ADVISORY COMMITTEE ON SPACE SYSTEMS

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

NAME: Advisory Committee on Space Systems.

DATE: May 31 and June 1, 1977.
TIME: 9 a.m. to 4 p.m.

PLACE: Room 305, Executive Office Building, 17th and Pennsylvania Avenue NW., Washington, D.C.

TYPE OF MEETING: Closed.

CONTACT PERSON: Mr. William Montgomery, Executive Office of the President, Office of Science and Technology Policy, Washington, D.C. 20500, telephone 202-395-4692.

PURPOSE OF ADVISORY COMMITTEE: The Office of Science and Technology Policy, in accordance with the statutory mandate to analyze and interpret significant developments and trends in science and technology and relate these to their impact on achievement of national goals and objectives will be identifying and evaluating the implications of technological advances such as the availability of the reusable space shuttle and other supporting systems on future space applications programs, specifically those related to military systems.

AGENDA: 9 a.m. to 4 p.m.—classified discussion of draft materials prepared as part of the policy review process for the President and the National Security Council.

REASON FOR CLOSING: The committee will be reviewing sensitive classified national security information involving design and employment of space systems. These discussions come under exemption 1 of the Government in the Sunshine Act, section 552b(c), Title 5 U.S.C.

AUTHORITY FOR CLOSING: The Director, Office of Science and Technology Policy has determined that this meeting deals with matters classified for national security and therefore should be closed.

The Committee Management Secretariat, OMB, has waived the requirement of 15 days publication of notice of determination in the FEDERAL REGISTER prior to the groups' establishment.

WILLIAM MONTGOMERY,
Executive Officer.

[FR Doc.77-14210 Filed 5-16-77;8:45 am]

OFFICE OF TELECOMMUNICATIONS POLICY

FREQUENCY MANAGEMENT ADVISORY COUNCIL

Meeting

Notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet at 9:30 a.m., at the Office of Telecommunications Policy, 1800 G Street NW., Washington, D.C. in Room 712 on June 1, 1977.

The principal agenda items will be (1) progress report on the ITU Conference preparations. (2) A proposed coordination process for mobile/transportable satellite earth terminals. (3) Naval electromagnetic compatibility analyses.

The meeting will be open to the public, except for (3) above. Any member of the public will be permitted to file a written statement with the Council, before or after the meeting.

Item (3) of the meeting will concern information covered by 5 U.S.C. 552 (b)(1), as such the meeting will be closed at that time pursuant to Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463).

Information pertaining to the meeting may be obtained from Mr. Jack E. Weatherford, Office of Telecommunications Policy, Washington, D.C. (Telephone: 202-395-5623.)

Dated: May 12, 1977.

L. D. O'NEILL,
Advisory Committee, Management Officer.

[FR Doc.77-14219 Filed 5-16-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[License No. 04/05-0086]

MARKET CAPITAL CORP.

Filing of Application for Approval of Conflict of Interest Transaction

Notice is hereby given that Market Capital Corporation (MCC), 1102 N. 28th Street, P.O. Box 22667, Tampa, Florida 33622, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act), has filed an application with the Small Business Administration (SBA) pursuant to section 312 of the Act and covered by § 107.1004 of the SBA rules and regulations, governing Small Business Investment Companies (13 CFR 107.1004 (1977)) for approval of Conflict of Interest Transaction falling within the scope of the above Section of the Act and Regulations.

Subject to such approval, MCC proposes to invest $86,000 in Futral Markets, Inc. (Futral), 205 N. Scenic Highway, Frostproof, Florida 33843, to retire sizeable short term obligations and increase its working capital.

The proposed financing is brought within the purview of § 107.1004 of the SBA Regulations since Mr. Robert Herman Futral, is a member of the Board of Directors of Affiliated of Florida, Inc., a retail grocery cooperative, the membership of which are the stockholders of MCC. Accordingly, Mr. Futral is considered by SBA to be an Associate of MCC.

Notice is hereby given that any interested person may, not later than May 27, 1977, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: April 25, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-14005 Filed 5-16-77;8:45 am]

DEPARTMENT OF STATE

Agency for International Development

AID PEST MANAGEMENT PROGRAM

Availability of Final Environmental Impact Statement

On September 30, 1976, the Agency for International Development (AID) published a notice of its issuance of a draft programmatic environmental impact statement concerning its pest management activities, including such activities conducted, supported or otherwise assisted by it for the procurement or use of pesticides. Public comment on the draft was solicited (41 FR 43202). The period for public comment on the draft statement ended on December 15, 1976.

The final environmental impact statement on AID's pest management program has been completed and copies were transmitted to the Council on Environmental Quality on May 13, 1977. A.I.D. will utilize the conclusions reached in this final EIS as a basis for the issuance of regulations which will govern A.I.D.'s future pest management activities.

Copies of the final statement are being sent to all government agencies and private organizations that made substantive comments on the draft statement, and to individuals who have previously requested copies. In addition, copies of the statement will be distributed to concerned international organizations and to foreign governments entitled to receive AID assistance.

Copies of the final statement are available for public inspection during regular working hours at the Agency for International Development, Room 409, Rosslyn Plaza C Building, 1601 North Kent Street, Arlington, Virginia; or single copies may be obtained upon request to A.I.D. Environmental Coordinator Albert Printz, Room 203B Rosslyn Plaza C, Agency for International Development, Washington, D.C. 20523.

Dated: May 13, 1977.

CURTIS FARRAR,
Assistant Administrator, Bureau for Technical Assistance.

[FR Doc.77-14200 Filed 5-16-77;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

INCOME TAX TREATY NEGOTIATIONS

The Treasury Department today announced the countries with which it is engaged in income tax treaty negotiations, released the text of its current "model" income tax treaty, and invited comments.

The Treasury Department has a general policy of announcing initial income tax treaty negotiations with particular countries, and giving an opportunity for comment. However, often negotiations are scheduled on short notice, making notice impractical, and often negotiations extend over a period of several years, so that earlier comments no longer reflect current problems. In order to give

better guidance and in order to obtain comments from interested persons, the Treasury Department today announced that negotiations are currently in process (or contemplated in the near future) with the following countries:

Bangladesh	India
Brazil	Italy
Canada	Kenya
Denmark	Netherlands
France	Singapore
Germany	Sri Lanka
Hungary	Yugoslavia

The Treasury Department would welcome amendments to previous comments, or new or supplemental comments concerning negotiations with those countries. Comments should be sent in writing to Laurence N. Woodworth, Assistant Secretary of the Treasury, U.S. Treasury Department, Washington, D.C. 20220. In addition, the Treasury Department always welcomes comments with respect to the advisability of entering into or revising income tax treaties with any country.

The Treasury Department also made available today the text of its current "model" income tax treaty. The Treasury Department is currently suggesting this model as a starting point for negotiations. The model conforms closely to the revised draft treaty which has been developed by the Organization for Economic Cooperation and Development and should be published later this year. Any comments on this model may also be sent to Laurence N. Woodworth.

The Treasury Department also announced today that the negotiations are virtually completed with the following countries:

Morocco
Republic of China (Taiwan)
Spain

Income tax treaties with Cyprus, Egypt, Israel, the Philippines, South Korea, and the United Kingdom have been signed and (except for Cyprus) submitted to the Senate for approval.

DAVID S. FOSTER,
International Tax Counsel.

[FR Doc.77-14004 Filed 5-16-77;8:45 am]

[Public Debt Series—No. 12-77]

TREASURY NOTES OF MAY 31, 1979
Series Q-1979

MAY 12, 1977.

1. INVITATION FOR TENDERS

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $1,500,000,000 of United States securities, designated Treasury Notes of May 31, 1979, Series Q-1979 (CUSIP No. 912827 GS 5). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts may also be issued for cash to Federal Reserve Banks as agents of foreign and international monetary authorities.

2. DESCRIPTION OF SECURITIES

2.1. The securities will be dated May 31, 1977, and will bear interest from that date, payable on a semiannual basis on November 30, 1977, and each subsequent 6 months on May 31 and November 30 until the principal becomes payable. They will mature May 31, 1979, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. SALE PROCEDURES

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, May 18, 1977. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 17, 1977.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full at the weighted average price (in three decimals) of accepted competitive tenders, and competitive tenders with the lowest yields will be accepted to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the weighted average price of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of

their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full or when the price is over par.

4. RESERVATIONS

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. PAYMENT AND DELIVERY

5.1. Settlement for allotted securities must be made or completed on or before Tuesday, May 31, 1977, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, May 26, 1977, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Tuesday, May 24, 1977, if the check is drawn on a bank in another Federal Reserve District. Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. GENERAL PROVISIONS

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities in full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury.

[FR Doc.77-14232 Filed 5-16-77;10:39 am]

VETERANS ADMINISTRATION

STATION COMMITTEE ON EDUCATIONAL ALLOWANCES

Continued Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances, that the hearing noticed for, and commenced on, Thursday, May 5, 1977 at 10:00 A.M., was continued until Wednesday, June 8, 1977, at 9:00 A.M., at which time the Los Angeles Regional Office Station Committee on Educational Allowances shall in Room 7106, at 11000 Wilshire Blvd., Los Angeles, California, continue the conduct of a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in National Training College, 4300 Campus Drive, Newport Beach, Calif. 92660, should be discontinued, as provided in 38 C.F.R. 21.4134, because a requirement of law is not being met or a provision of law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: May 9, 1977.

JOHN G. MILLER,
Director,
VA Regional Office.

[FR Doc.77-14045 Filed 5-16-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 391]

ASSIGNMENT OF HEARINGS

MAY 12, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 142124 Sub 1, Package Delivery, Inc. now assigned June 6, 1977 at Charlotte, North Carolina is cancelled, application dismissed.

MC 134755 (Sub-80), Charter Express, Inc., now assigned June 14, 1977 at Omaha, Nebraska, is cancelled and the application is dismissed.

MC 117416 Sub 53, Newman & Pemberton Corp., now assigned June 7, 1977, at Columbia, Ohio, is cancelled and transfered to modified procedure.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-14065 Filed 5-16-77;8:45 am]

FINANCE APPLICATIONS

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 5(2) or 210a(b) of the Interstate Commerce Act.

An original and two copies of protests against the granting of the requested authority must be filed with the Commission on or before June 17, 1977. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's General Rules of Practice (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's

representative, or applicant, if no representative is named.

No. MC-F-11490. (Petition for modification) (CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE—POOLING — SILVER WHEEL FREIGHTLINES, INC.), published in the March 29, 1972, issue of the FEDERAL REGISTER. By petition filed September 9, 1976, Consolidated Freightways Corporation of Delaware and Silver Wheel Freightlines, Inc., seek modification of the order of February 12, 1973, as modified by order of February 15, 1973, which approved the pooling agreement in the above-entitled proceeding, in order to add eighteen points to the existing pooling agreement. The points to be added, all located in Oregon, are Adair Air Force Base, Adrian, Biggs Junction, Bonneville Dam, Brownlee, Draperville, Dufur, Enterprise, Gervis, Huntington, Jefferson, Maupin, Monmouth, Pilot Rock, Rickreall, Shedd, Tygh Valley, and Vale. Garrett Freightlines, Inc., which was authorized to participate in the pool to certain points by order of December 17, 1973, has not joined in the request to pool to the eighteen additional points.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-14066 Filed 5-16-77;8:45 am]

FINANCE APPLICATIONS

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to sections 5(2) or 210a(b) of the Interstate Commerce Act.

An original and two copies of protests against the granting of the requested authority must be filed with the Commission on or before June 17, 1977. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's General Rules of Practice (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

No. MC-F-10124 (Petition for modification) (CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, ET AL., POOLING), published in the May 22, 1968, issue of the FEDERAL REGISTER. By petition filed January 25, 1977, Consolidated Freightways Corporation of Delaware, Lee Way Motor Freight, Inc., Riss International Corporation, Transcon Lines, Spector Freight System, Inc., Yellow Freight Systems, Inc., Ryan Freight Lines, Inc., and Red Ball Motor Freight, Inc., seek modification of the order of the Commission, dated March 1, 1971, which approved the pooling agreement in the above-entitled proceeding in order to substitute Red Ball Motor Freight, Inc., for Ryan Freight Lines, Inc., under said agreement, and that Red Ball Motor Freight, Inc., would assume the duties, responsibilities and obligations of Ryan Freight Lines, Inc., as set forth threin.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-14067 Filed 5-16-77;8:45 am]

[Notice No. 63]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relates. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 2025 (Sub-No. 1TA), filed April 22, 1977. Applicant: COLEMAN AMERICAN MOVING SERVICES, INC., P.O. Drawer 1568, Dothan, Ala. 36301. Applicant's representative: R. S. Richard, 57 Adams Avenue, Montgomery, Ala. 36103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods, and unaccompanied baggage*, between points in Mobile, Baldwin, Washington, Clarke, Monroe, Escambia and Conecuh Counties, Ala., restriction said operations are restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, said operations are restricted to the performance of pick-up and delivery service in connection with packing, crating, and containerization, and unpacking, uncrating, and decontainerization of such traffic, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are 3 statements of support attached to application, which may be examined at the Interstate Commerce Commission, in Washington, D.C. or copies thereof which may be examined at the field office named below. Send protests to: Cifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 1616, 2121 Building, Birmingham, Ala. 35203.

No. MC 16903 (Sub-No. 49TA), filed April 15, 1977. Applicant: MOON FREIGHT LINES, INC., 120 West Grimes Lane, P.O. Box 1275, Bloomington, Ind. 47401. Applicant's representative: Walter F. Jones, Jr., 601 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Urethane foam products, component parts and accessories* moving in the same vehicle, from Charleston, Ill. to points in West Virginia, Pennsylvania, North Carolina, Virginia, District of Columbia, Maryland, Delaware, New Jersey, New York, Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, Vermont, Tennessee, Mississippi, Alabama, Georgia and South Carolina, restricted to transportation originating at the plantsite of The Celotex Corporation, Charleston, Ill., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Celotex Corporation, 1500 North Dale Mabry, Tampa, Fla. 33607. Send protests to: William S. Ennis, District Supervisor, Interstate Commerce Commission, Federal Bldg., and U.S. Courthouse, 46 East Ohio Street, Rm. 469, Indianapolis, Ind. 46204.

No. MC 32779 (Sub-No. 12TA), filed April 19, 1977. Applicant: SILVER EAGLE COMPANY, 2532 S.E. Hawthorne Boulevard, Portland, Oreg. 97214. Applicant's representative: Robert R. Hollis, 520 S. W. Yamhill St., Suite 400, Portland, Oreg. 97204. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring the use of special equipment, (1) between Spokane, Wash., and Seattle, Wash., and their respectives Commercial Zones, serving intermediate and off route points in Lincoln, Adams, Grant and Kittitas Counties, Wash.: From Spokane over Interstate Highway 90 to Seattle and return over the same route. (2) between Spokane, Wash., and Portland, Oreg., and their respective Commercial Zones serving intermediate and off-route points in Lincoln, Adams, Franklin, Walla Walla, Benton and Klickitat Counties, Wash.: From Spokane over Interstate 90 to junction U.S. Highway 395, thence over U.S. Highway 395 to junction U.S. Highway 730, thence over U.S. Highway 730 to junction Interstate Highway 80 north, thence over Inter-

state Highway 80 north to Portland and return over the same route. (3) between Pasco, Wash., and Wenatchee, Wash., and their respective Commercial Zones, serving intermediate and off-route points in Benton, Yakima and Kittitas Counties, Wash.: From Pasco over U.S. Highway 12 to junction U.S. Highway 97, thence over U.S. Highway 97 to Wenatchee and return over the same route, for 180 days. Applicant intends to interline at Portland, Oreg., Seattle, and Spokane, Wash., and other interline points. Supporting shipper: There are 68 statements of support attached to the application, which may be examined at the Interstate Commerce Commission, in Portland, Oreg. at the field office below. Send protests to: District Supervisor, A. E. Odoms, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 S. W. Yamhill St., Portland, Oreg. 97204.

No. MC 47583 (Sub-No. 47TA), filed April 11, 1977. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Rd., Kansas City, Kans. 66115. Applicant's representative: D. S. Hults, P.O. Box 225, Lawrence, Kans. 66044. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cellulose insulation*, in bags, blowing machines and replacement parts and supplies for blowing machines, from the plantsite and storage facilities of General Fiber Corporation, at or near Commerce City, Colo., to all points in Arkansas and Louisiana, (2) *materials, equipment and supplies* used in the manufacture and distribution of cellulose insulation, except commodities in bulk, from points in Arkansas and Louisiana, to the plantsite and storage facilities of General Fiber Corporation, at or near Commerce City, Colo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: General Fiber Corporation, 50701 Dexter, Commerce City, Colo. 80022. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106.

No. MC 48221 (Sub-No. 9TA), filed April 29, 1977. Applicant: W. N. MOREHOUSE TRUCK LINE, INC., 4010 Dahlman Avenue, Omaha, Nebr. 68107. Applicant's representative: Donald L. Stern, Suite 530 Univac Bldg., 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses* as described in Sections A & C of Appendix I to the Report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodites in bulk), from Commerce City, Colo., to points in Arizona, California, Nevada, Oregon and Washington, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Don C. Romios, Sales Manager, Gold Star Beef Co., 4810 Newport, Commerce City, Colo. 80022. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th St., Omaha, Nebr. 68102.

No. MC 60131 (Sub-No. 10TA), filed April 29, 1977. Applicant: ROCKY FORD MOVING VANS, INC., 3811 West Industrial Avenue, P.O. Box 11, Midland, Tex. 79701. Applicant's representative: Robert J. Gallagher, 55 Madison Avenue, Morristown, N.J. 07960. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used automobiles* the shipment of automobiles will be restricted against secondary movement in driveaway service; and further restricted to movement solely by a truck, between points in California, Utah, Nevada, Arizona, New Mexico, Colorado, Kansas, Oklahoma, Texas, Louisiana, Arkansas, Missouri, Georgia, Florida, North Carolina, South Carolina, Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Massachusetts, Michigan, Ohio, Indiana, Illinois, Kentucky, Tennessee, Alabama, Mississippi, Wisconsin, Minnesota, and the District of Columbia, for 180 days. Supporting shipper: There are 3 statements of support attached to the application, which may be examined at the Interstate Commerce Commission, in Washington, D.C., copies thereof which may be examined at the field office named below. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H-4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 75406 (Sub-No. 42TA), filed April 26, 1977. Applicant: SUPERIOR FORWARDING COMPANY, INC., 2600 South 4th Street, St. Louis, Mo. 63118. Applicant's representative: Gregory M. Rebman, 314 N. Broadway, Suite 1230, St. Louis, Mo. 63102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, and except livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading between junction of U.S. Highway 79 and Arkansas Highway 86, and junction Arkansas Highway 86 and U.S. Highway 49, serving intermediate points including Holly Grove, Ark., and serving joinder points above, for 180 days. Supporting shipper: Holly Grove Farm Store, Inc., Route 1, Holly Grove, Ark., Johnson's Groceries & Gen. Merchandise, P.O. Box 116, Holly Grove, Ark., Jeff Calloway, Inc., P.O. Box A-B, Holly Grove, Ark., O. & H. Equipment Co., P.O. Box 129, Holly Grove, Ark., Brooks, Rexall Drugs, P.O. Box "H", Holly Grove, Ark., Bank of Holly Grove, Arkansas, Lynlee Drive, Holly Grove, Ark. Send protests to: District Supervisor J. P. Werthmann, Interstate Commerce Commission, Bureau of Operations, Rm. 1465, 210 N. 12th Street, St. Louis, Mo. 63101.

No. MC 78400 (Sub-No. 52TA), filed April 28, 1977. Applicant: BEAFORT TRANSFER COMPANY, P.O. Box 151, Gerald, Mo. 63037. Applicant's representative John E. Burruss, Jr., P.O. Box 1069, Jefferson City, Mo. 65101. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, commodities in bulk, household goods, as defined by the Commission, and commodities requiring special equipment), between Linn, Mo., and Kansas City, Kansas, serving the intermediate points of Centertown, St. Martins, McGirk, Calif., Tipton, and Kansas City, Mo. and the off-route points of Lohman, Russellville, High Point, Latham, Clarksburg, and Prairie Home, Jamestown, Schubert, Bend, Bay, Copper Hill, Hope, Frankenstein, Ryors, Taos, Freedom, Swiss, Rich Fountain, and Luystown; From Linn, Mo., over U.S. Highway 50 to Kansas City, Kans. and return over the same route, also, between Tipton, Mo., and East St. Louis, Ill., serving the intermediate points of California, McGirk, Centertown, St. Martins, St. Louis, Mo., and the off-route points of Prairie Home, Jamestown, Lohman, Russellville, Frankenstein, Ryors, Taos, Freedom, Swiss, Rich Fountain, High Point, Latham, Clarksburg, Bend, Bay, Copper Hill, Hope, and Luystown. Restriction: The authority requested and the authority now held by applicant shall not be tacked or combined for the purpose of performing through service between St. Louis, Mo., Illinois, Kansas City, Missouri-Kans., and Jefferson City, Mo., for 180 days. Supporting shippers: There are 33 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C. or copies thereof which may be examined at the field office named below. Send protests to: J. P. Werthmann, District Supervisor, Interstate Commerce Commission, Rm. 1465, 210 N. 12th Street, St. Louis, Mo. 63101.

No. MC 82063 (Sub-No. 78TA), filed April 28, 1977. Applicant: KLIPSCH HAULING CO., 10795 Watson Road, St. Louis, Mo. 63127. Applicant's representative: W. E. Klipsch (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid wood preservative paste*, in bulk, in tank vehicles, from Memphis, Tenn., to Roosevelt Town, N.Y., for further delivery in Foreign Commerce to St. Andre East, Quebec, Canada, and Madera, Calif., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Commercial Chemical Co., Division of Osmose Wood Preservative, Inc., P.O. Box 7275, Memphis, Tenn. 38107. Send protests to: J. P. Werthmann, District Supervisor, Interstate Commerce Commission, Rm. 1465, 210 N. 12th Street, St. Louis, Mo. 63101.

No. MC 103993 (Sub-No. 887TA), filed April 20, 1977. Applicant: MORGAN DRIVE AWAY, INC., 28651 U.S. 20 West, Elkhart, Ind. 46514. Applicant's repre-

sentative: Paul D. Borghesani (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Single wide mobile homes* in initial movements, from points in Montgomery County, Tenn. to points in Illinois, Ohio, Indiana, Kentucky, Missouri, North Carolina, Tennessee, West Virginia, South Carolina, Georgia, Alabama, Mississippi and Arkansas, for 180 days. Supporting shipper: Modular Structures, P.O. Box 2296, Clarksville, Tenn. 37040. Send protests to: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne St., Suite 113, Fort Wayne, Ind. 46802.

No. MC 106398 (Sub-No. 773TA); filed April 18, 1977. Applicant: NATIONAL TRAILER CONVOY, INC., 525 S. Main, P.O. Box 3329, Tulsa Okla. 74101. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from the plantsites of Challenger Homes, Inc. and its division located in Columbia, Tenn., and the plantsite of American Pride Division of Challenger Homes, Inc., in Ardmore, Tenn., to points in Alabama, Georgia, Wisconsin, Mississippi, Louisiana, Missouri, Illinois, Indiana, Ohio, Kentucky, Michigan, West Virginia, Virginia, North Carolina, South Carolina, Pennsylvania, and Oklahoma, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Challenger Homes, Inc. and American Pride Division of Challenger Homes, Inc., P.O. Box 1057, Demasters Lane, Columbia, Tenn. 38401. Send protests to: District Supervisor Joe Green, Rm. 240, Old Post Office Bldg., 215 Northwest Third St., Oklahoma City, Okla. 73102.

No. MC 108393 Sub-No. 118TA, filed April 19, 1977. Applicant: SIGNAL DELIVERY SERVICE, INC., 201 E. Ogden Avenue, Hinsdale, Ill. 60521. Applicant's representative: Thomas B. Hill (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Parts of electrical and gas appliances and equipment, materials and supplies* used in the manufacture, distribution and repair of electrical and gas appliances, between Belvidere, Ill., on the one hand, and, on the other, St. Joseph, Mich. and Clyde, Ohio, under a continuing contract or contracts with Whirlpool Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Whirlpool Corporation, Carl R. Anderson, Director of Corporate Traffic, Administrative Center, Benton Harbor, Mich. 49022. Send protests to: Transportation Assistant Particia A. Roxcoe, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Rm. 1396, Chicago, Ill. 60604.

No. MC 111045 (Sub-No. 140TA), filed April 12, 1977. Applicant: REDWING CARRIERS, INC., P.O. Box 426, 7809 Palm River Rd., Tampa, Fla. 33601. Applicant's representative: L. W. Fincher (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry sand*, in bulk, in closed vehicles, from points in Florida to Montgomery, Ala., for 180 days. Supporting shipper(s): Brockway Glass Company, Inc., P.O. Box 8038, Montgomery, Ala. Send protest to: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations Monterey Bldg., Suite 101, 8410 NW., 53rd Terrace, Miami, Fla. 33166.

No. MC 112520 (Sub-No. 338TA), filed April 28, 1977. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, 122 Appleyard Drive, Tallahassee, Fla. 32302. Applicant's representative: Sol H. Proctor 1101 Blackstone Building, Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Processed clay catalyst*, in bulk, in tank vehicles, from Attapulgus, Ga. to Marcus Hook, Pa., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Engelhard Minerals & Chemicals Corp., Menlo Park, Edison, N.J. 08817. Send protests to: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 113784 (Sub-No. 61TA), filed April 19, 1977. Applicant: LAIDLAW TRANSPORT LIMITED, 65 Gulse Street, Hamilton, Ontario, Canada L8L 7X7. Applicant's representative: Douglas Ross Gowland (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Quick lime*, in pneumatic tank vehicles, for and on behalf of Canadian Gypsym Company, Limited, Guelph, Ontario, from ports of entry on the United States-Canada boundary line located on the Niagara River to the premises of Armco Steel Corporation located in Butler, Pa., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Canadian Gypsum Company, Limited, P.O. Box 4034, Terminal A, Toronto, Ontario M5W 1K8. Send protests to: George M. Parker, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 910 Federal Bldg., 111 West Huron St., Buffalo, N.Y. 14202.

No. MC 114045 (Sub-No. 464TA), filed April 14, 1977. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, Tex. 75261. Applicant's representative: J. B. Stuart (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery and confectionery products*, except in bulk, in vehicles equipped with mechanical refrigeration, from the storage facilities utilized by M&M/MARS, located at or near Hampden Township, Cumberland County, Pa. to points in Texas, Utah, Washington, Arizona, California, Idaho, Louisiana, Nevada New Mexico, Oklahoma and Oregon, restricted to traffic moving for M&M/Mars originating at the above named origin and destined to the above named destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Rm. 13012, Dallas, Tex. 75242. Supporting Shipper: M&M/Mars, a division of Mars, Incorporated, High St. Hackettstown, N.J. 07840.

No. MC 114097 (Sub-No. 8TA), filed April 29, 1977. Applicant: NIEDFELDT TRUCKING SERVICE, INC., 821 South Front St., La Crosse, Wis. 54601. Applicant's representative: Edward H. Instenes, P.O. Box 676, Winona, Minn. 55987. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and return of empty beverage containers* between La Crosse, Wis., and St. Louis, Mo., under a continuing contract or contracts with G. Heileman Brewing Co., Continental Can Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: G. Heileman Brewing Co., La Crosse, Wis. 54601. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 139 W. Wilson St., Rm. 202, Madison, Wis. 53703.

No. MC 116073 (Sub-No. 352TA) filed April 14, 1977. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., 1825 Main Avenue, P.O. Box 919, Moorhead, Minn. 56560. Applicant's representative: John C. Barrett (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers*, designed to be drawn by passenger automobiles (except travel trailers), *and buildings*, in initial movement, from at or near Ocala and Sarasota, Fla.; Arkansas City and Halstead, Kans.; Bossier City, La; Kinderhook, N.Y.; Mocksville, N.C.; Ephrata, Leola, and Schaefferston, Pa.; Holmesville and Sugarcreek, Ohio and Temple, Tex. to all points in the United States, including Alaska but excluding Hawaii, and (2) *Buildings*, from Lancaster, Wis., to all points in the United States, including Alaska but excluding Hawaii, for 180 days. Supporting shipper: Skyline Corporation, 2520 By-Pass Rd., Elkhart, Ind. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 116254 (Sub-No. 180TA), filed April 22, 1977. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, Ala. 35630. Applicant's representative: Hampton M. Mills (same address as applicant). Authority sought to operate as a *com-*

mon carrier, by motor vehicle, over irregular routes, transporting: *Spent phosphoric acid* in bulk in tank vehicles, from Clanton, Ala., and Pontotoc, Miss., to points in Texas and Louisiana, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Glidewell Chemical Products, Inc., 2515 Decatur Street, Richmond, Va. 23224. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 1616, 2121 Building, Birmingham, Ala. 35203.

No. MC 116254 (Sub-No. 181TA), filed April 19, 1977. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, Ala. 35630. Applicant's representative: Hampton M. Mills (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Peanut meal,* in bulk, in hopper-type vehicles, (1) from Enterprise, Ala., to Lafayette and Clinton, Ind., (2) from Graceville, Fla., to Lafayette and Clinton, Ind. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Eli Lilly and Company, Box 618, Indianapolis, Ind. 46206. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 1616, 2121 Building, Birmingham, Ala. 35203.

No. MC 117119 (Sub-No. 623TA), filed April 20, 1977. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, Ark. 72728. Applicant's representative: L. M. McLean (Same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail discount stores (except commodities in bulk), from the facilities of Howard Bros. Discount Stores at Monroe, La., to McAlester and Ponca City, Okla., for 180 days. Supporting shipper: Howard Bros. Discount Stores, Inc., 3030 Aurora, Monroe, La. 71201. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 117765 (Sub-No. 228TA), filed April 11, 1977. Applicant: HAHN TRUCK LINE, INC., P.O. Box 75218, 5315 NW. 5th St., Oklahoma City, Okla. 73107. Applicant's representative: R. E. Hagan (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (not frozen) and *pet foods,* in containers (1) from the plantsite and facilities of Blytheville Canning Co., Inc., Blytheville, Ark., points in Alabama, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Oklahoma, Tennessee, Texas and Wisconsin; (2) from the plantsite and facilities of Valley Canning Company, Cecilia, and Ville Platte, La. to points in Arkansas, Michigan, Oklahoma, and Wisconsin; (3) from the plantsite and facilities of Blytheville Canning Company, Inc., Muskogee, Okla. to points in Illinois, Indiana, Iowa, Minnesota and Wisconsin; and (4) from the plantsite and facilities of Bush Brothers Canning Company, Augusta, Wis. and Shiocton Kraut Company, Shiocton, Wis. to points in Arkansas, Colorado and Oklahoma, for 180 days. Supporting shipper: Blytheville Canning Co., Inc., P.O. Box 167, Blytheville, Ark. 72315. Send protests to: District supervisor Joe Green, Rm. 240, Old Post Office Bldg., 215 Northwest Third St., Oklahoma City, Okla. 73102.

No. MC 126612 (Sub-No. 9TA), filed April 29, 1977. Applicant: SALVATORE GIARRAPUTO, doing business as SEMOLINA HAULAGE COMPANY, 86 Kent Avenue, Brooklyn, N.Y. 11211. Applicant's representative: Murray S. Bornstein, 253 Broadway, New York, N.Y. 10007. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Bulk flour,* in special tank vehicles, from Brooklyn Eastern District Terminal, Brooklyn, N.Y., to West Haven and New Haven, Conn., under a continuing contract or contracts with Lender's Bagel Bakery, Inc., for 180 days. Supporting shipper: Lender's Bagel Bakery, Inc., Post Road, West Haven, Conn. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 126612 (Sub-No. 10TA), filed April 29, 1977. Applicant: SALVATORE GIARRAPUTO, doing business as SEMOLINA HAULAGE COMPANY, 86 Kent Avenue, Brooklyn, N.Y. 11211. Applicant's representative: Murray S. Bornstein, 253 Broadway, New York, N.Y. 10007. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Bulk flour,* in special tank vehicles, from Brooklyn Eastern District Terminal, Brooklyn, N.Y., to Bridgeport, Conn., under a continuing contract or contracts with Country Home Bakery, Inc., for 180 days. Supporting shipper: Country Home Bakery, Inc., 1722 Barnum Ave. Bridgeport, Conn. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 126904 (Sub-No. 21TA), filed April 20, 1977. Applicant: H. C. PARRISH TRUCK SERVICE, INC., RFD No. 2 Box 264, Freeburg, Ill. 62243. Applicant's representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, Mo. 63105. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Concrete filter blocks,* from St. Louis, Mo., to Piscataway, Md., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: James E. Hereford, President, Hereford Concrete Products, Inc., 6655 Rockbrook Avenue, St. Louis, Mo. 63133. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 128007 (Sub-No. 99TA), filed April 11, 1977. Applicant: HOFER, INC., P.O. Box 583, 4032 Parkview Drive, Pittsburg, Kans. 66762. Applicant's representative: Larry E. Gregg, 641 Harrison St., Topeka, Kans. 66603. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Dry fish meal* (1) from Empire, La.; Port Arthur, Tex. and Gulfport, Miss. to points in Alabama, Georgia, Indiana, Kentucky, Louisiana, Minnesota, Mississippi, Tennessee and Wisconsin; (2) from Port Arthur, Tex. and Gulfport, Miss., to points in Texas; and (3) from Gulfport, Miss., to points in Arkansas, Illinois, Iowa, Kansas, Missouri, and Oklahoma, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Petrou Fisheries, Inc., P.O. Box 128, Empire, La. 70050. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Suite 101 Litwin Bldg., Wichita, Kans. 67202.

No. MC 129032 (Sub-No. 38TA), filed April 27, 1977. Applicant: TOM INMAN TRUCKING, INC., 6015 S. 40th West Avenue, P.O. Box 9667, Tulsa, Okla. 74107. Applicant's representative: Michael J. Stecher, 256 Montgomery Street, San Francisco, Calif. 94104. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs, including dairy products* (except in bulk) in vehicles requiring mechanical refrigeration, from Plymouth, Wis., to points in Arizona, California, Colorado, Oregon and Washington, for 180 days. Supporting shipper: Borden Foods Division, Borden, Inc., 180 E. Broad Street, Columbus, Ohio 43215. Send protests to: District Supervisor Joe Green, Rm. 240, Old Post Office Bldg., 215 Northwest Third St., Oklahoma City, Okla. 73102.

No. MC 129034 (Sub-No. 15TA), filed April 12, 1977. Applicant: LOOMIS COURIER SERVICE, INC., 390 Fourth St., San Francisco, Calif. 94107. Applicant's representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, Oreg. 97210. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Cash letters* (cash letters is as described in Bankers Dispatch Corp. Conv. 110 MCC 294) (1) between points in Oregon; (2) between points in Skamania and Klickitat Counties, Wash. and Wasco and Hood River Counties, Oreg.; and (3) between points in Skamania and Klickitat Counties, Wash., on the one hand, and, on the other, Portland, Oreg., and its commercial zone, under continuing contracts with Banks and banking institutions, for 180 days. Supporting shipper: There are approximately 6 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor Claud W. Reeves, 211 Main-Suite 500, San Francisco, Calif. 94105.

No. MC 129963 (Sub-No. 5TA), filed April 27, 1977. Applicant: FAN McKELVEY doing business as McKELVEY TRUCKING, 5420 West Missouri Road, Glendale, Ariz. 85301. Applicant's representative: A. Michael Bernstein, 1441 East Thomas Road, Phoenix, Ariz. 85014. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from the plantsite of Hoerner Waldorf located in Orange County, Calif., to points in Arizona and Colorado, under a continuing contract or contracts with American Forest Products Corporation, Calpine Containers, Vegetable Growers Supply Co., Weyerhaeuser Company and Capital Lumber Supply Co., Hoerner Waldorf, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hoerner Waldorf, 2250 Wabash Avenue, St. Paul, Minn. 55114. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Rm. 3427 Federal Bldg., 230 N. Frist Ayenue, Phoenix, Ariz. 85025.

No. MC 133377 (Sub-No. 11TA), filed April 18, 1977. Applicant: COMMERCIAL SERVICES, INC., 114 Memorial Road, Storm Lake, Iowa 50588. Applicant's representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* as described in Sections A and C, Appendix I, 61 M.C.C. 209 and 766, except hides and commodities in bulk, from Lyons, Nebr. to points in Iowa, Minnesota, and Wisconsin, restricted to traffic originating at the plantsite and storage facilities of Premier Boneless Meats at Lyons, Nebr. and destined to named States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Joe Francis, President, Premier Boneless Meats, Inc. Box 37616, Omaha, Maine, 68137. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th St., Omaha, Nebr. 68102.

No. MC 134755 (Sub-No. 102TA), filed April 11, 1977. Applicant: CHARTER EXPRESS, INC., 1959 E. Turner St., P.O. Box 3772, Springfield, Mo. 65804. Applicant's representative: Larry D. Knox, 900 Hubbell Bldg., Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* (except commodities in bulk, in tank vehicles, and hides), from the plantsite and storage facilities of Royal Packing Co., located at or near National City, Ill., to Danbury and Stamford, Conn.; Boston and Springfield, Mass.; Hawthorne and Patterson, N.J.; New York and Utica, N.Y.; and Philadelphia, Pa., for 180 days. Supporting shipper: Royal Packing Co., P.O. Box 156, National Stockyards, Ill. 62071. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106.

No. MC 135982 (Sub-No. 15TA), filed April 27, 1977. Applicant: S. L. HARRIS, doing business as P. B. I., P.O. Box 7130, Longview, Tex. 75601. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, Tex. 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metal containers, and metal container ends*, and (2) *shrouds, pallets, chipboard and dunnage materials*, (1) from Longview, Tex., to Memphis, Tenn., and (2) from Memphis, Tenn., to Longview, Tex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Jos. Schlitz Brewing Company, 235 West Galena St., Milwaukee, Wis. 53121. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Rm. 13C12, Dallas, Tex. 75242.

No. MC 136077 (Sub-No. 6TA), filed April 29, 1977. Applicant: REBER CORPORATION, 2216 Old Arch Road, Norristown, Pa. 19401. Applicant's representative: Floyd A. Reber (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime*, in bulk, in pneumatic tank vehicles, from Plymouth Meeting, Pa., to North Carolina and South Carolina, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: G. & W. H. Corson, Inc., Plymouth Meeting, Pa. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch Street, Rm. 3238, Philadelphia, Pa. 19106.

No. MC 136792 (Sub-No. 1TA), filed April 29, 1977. Applicant: KISER-MECKLENBURG WRECKER SERVICE, INC., 3032 Rozzells Ferry Road, Charlotte, N.C. 28208, Applicant's representative: Ernest S. Delaney III, Suite 100, Civic Plaza, 801 East Trade St., Charlotte, N.C. 28202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked and disabled trucks, tractors and trailers* (except trailers designed to be drawn by passenger automobiles) and replacement vehicles for the aforementioned vehicles from Mecklenburg County, Gaston County, Union County, Cabarrus County, Lincoln County, and Catawba County, North Carolina, to Georgia, South Carolina, Virginia, Maryland, Alabama, Florida, Ohio, Kentucky, Delaware, New Jersey, Pennsylvania, Mississippi, Louisiana, and Arkansas, for 180 days. Supporting shippers: There are 8 statements of support attached to application which may be examined at the Interstate Commerce Commission, in Washington, D.C., or copies thereof which may be examined at the field office below. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd., Rm. CC 516, Mart Office Building, Charlotte, N.C. 28205.

No. MC 136817TA, filed April 28, 1977. Applicant: HUNTER BROKERAGE, INC., 427 E. Washington Ave, Suite 405, Council Bluffs, Iowa 51501. Applicant's representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, (1) from Moravia, Tama, Belle Plaine, Oxford Junction, and Guttenberg, Iowa, and points in their commercial zones, to Logan, Utah, and Los Angeles, Calif, and points in Minnesota, Wisconsin, Nebraska, Illinois, Ohio, Kentucky, Tennessee, Georgia, North Carolina, Virginia, Indiana, Arkansas, and Pennsylvania; (2) from points in Wisconsin, Illinois, and Missouri, to Belle Plaine and Oxford Junction, Iowa, and points in their commercial zones; and (3) from Grand Rapids, Michigan, and Stoughton, Wis., to Loveland, Colo. Restriction: Restricted to a transportation service to be performed under a continuing contract, or contracts, with McGuffin Lumber, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: James P. McGuffin, President, McGuffin Lumber, Inc., 3142 Central Street, Evanston, Ill. 60201. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 138486 (Sub-No. 3TA3) filed April 11, 1977. Applicant: DAVE WHITE, doing business as DAVE WHITE TRUCKING, R.R. No. 1, P.O. Box 488, Cerro Gordo, Ill. 61818. Applicant's representative: John E. Harvey, P.O. Box 1470, Decatur, Ill. 62525. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Grain or soybean products, dry, in bulk, bags or boxes, in straight or mixed loads*, from the plantsite and storage facilities of Archer Daniels Midland Company, Decatur, Ill., to points in Illinois, Minnesota, Iowa, Missouri, Tennessee, Kentucky, Indiana, Ohio, Michigan, and Wisconsin under a continuing contract with Archer Daniels Midland Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Jerry C. Slaughter, General Traffic Manager, Archer Daniels Midland Company, 4666 Faries Parkway, P.O. Box 1470, Decatur, Ill. 62525. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 138931 (Sub-No. 3TA), filed April 20, 1977. Applicant: LOUIE SENSKE AND JIM SENSKE, doing business as SENSKE AND SON TRANSFER, 117 4th Ave. North, Crookston, Minn. 56716. Applicant's representative: James B. Hovland, 414 Gate City Bldg., P.O. Box 1637, Fargo, N. Dak. 58102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes,

transporting: (1) *Earth moving scrapers and parts and attachments* for earth moving scrapers, from the facilities of Toreq, Inc., at or near Thief River Falls, Minn., to points in Texas, Oklahoma, Colorado, Wyoming, Montana, North Dakota, South Dakota, Nebraska, Wisconsin, Iowa, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, Tennessee, Kentucky, Pennsylvania, Ohio, Indiana, Illinois, and Michigan, and (2) *materials and supplies* (except commodities in bulk) used in the manufacture of earth moving scrapers, from points in Ohio, Illinois, and Indiana on and north of U.S. Highway 70, to the facilities of Toreq, Inc., at or near Thief River Falls, Minn., under a continuing contract or contracts with Toreq, Inc., Box 436, Thief River Falls, Minn. 56701. Supporting shipper: Toreq, Inc., Box 436, Thief River Falls, Minn. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 139017 (Sub-No. 4TA), filed Apri' 11, 1977. Applicant: HEAD ENTERPRISES, INC., Route 2, Box 88, Adairsville, Ga. 30103. Applicant's representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, Ga. 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building, roofing or sheathing paper, including asbestos or felt paper, saturated* or not saturated, not coated, nor corrugated, nor decorated, from the facilities of Firstline Corporation at Valdosta, Ga., to Arlington and Malakoff, Tex.; Bloomington, Calif.; Boise, Idaho; Bourbon, Ind.; Champlain, N.Y.; Charlotte, N.C.; Detroit, Mich.; Hillsboro, Kans.; Lake Oswego, Oreg.; Loveland, Colo.; New Holland, Pa.; New Ulm, Minn.; Ocala, Fla.; and Seattle, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Firstline Corporation, 3435 Wilshire Blvd., Los Angeles, Calif. 90010. Send protests to: Sara K. Davis, Transportation Assistant, Bureau Of Operations, Interstate Commerce Commission, 1252 W. Peachtree St. NW., Rm. 546, Atlanta, Ga. 30309.

No. MC 140033 (Sub-No. 23TA), filed April 28, 1977. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, Tex. 75220. Applicant's representative: Lawrence A. Winkle, Suite 1125 Exchange Park, P.O. Box 45538, Dallas, Tex. 75245. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime in bags or boxes* (except commodities in bulk), from Midlothian and Dallas, Tex., to Allen Park, Mich.; Atlanta, Ga.; Beloit, Wis.; Brentwood, Md.; Council Bluffs, Iowa; Cucamonga, Calif.; Fall River, Mass.; Indianapolis, Ind.; Jackson, Miss.; Kirkwood, N.Y.; Los Angeles, Calif.; Louisville, Ky.; Lubbock, Tex.; Monroe, Wis.; Massillon, Ohio; Orlando, Fla.; Salisbury, N.C.; San Jose, Calif.; Topeka, Kan.; Vancouvre, Wash.; Williamsport, Pa.; Wooster, Ohio; and Oklahoma City, Okla.; for 180 days. Supporting shipper: Atlanters Chemical Services, P.O. Box 47101, Dallas, Tex. 75247. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Rm. 13C12, Dallas, Tex. 75242.

No. MC 140389 (Sub-No. 15TA), filed April 29, 1977. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Highway 77 North, Gadsden, Ala. 35902. Applicant's representative: Larry Smith (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from plantsites of or used by Morgan Colorado Beef Company at or near Fort Morgan, Colo., to Calhoun, Ga., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Morgan Colorado Beef Co., East Burlington Avenue, Fort Morgan, Colo. 80701. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 1616, 2121 Building, Birmingham, Ala. 35023.

No. MC 142038 (Sub-No. 2TA), filed April 28, 1977. Applicant: DARIO GUERRA, doing business as DARIO GUERRA TRANSFER, 1040 Biscayne Blvd., Ste. 303, Miami, Fla. 33132. Applicant's representative: Richard B. Austin, 5255 N.W. 87th Avenue, Ste. 214, Palm Coast II Bldg., Miami, Fla. 33178. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A & B explosives, household goods, commodities in bulk, cement, motor vehicles and articles requiring specialized equipment), in shipper owned trailers between points in Dade County, Fla., on and north of North Kendall Drive (SR 94) and on and east of Krome Ave. (SR 27) restricted to traffic having an immediately prior or subsequent movement by water in interstate or foreign commerce, for 180 days. Supporting shippers: There are 4 statements of support attached to the application which may be examined at the Interstate Commerce Commission, in Washington, D.C. or copies thereof which may be examined at the field office below. Send protests to: Donna M. Jones, Transportation Assistant, Monterey Building, Suite 101, 8410 N.W. 53rd Terrace, Miami, Fla. 33166.

No. MC 142207 (Sub-No. 7TA), filed April 12, 1977. Applicant: GULF COAST TRUCK SERVICES, INC., P.O. Box 29486, New Orleans, La. 70189. Applicant's representative: Bruce E. Mitchell, 3379 Peachtree Rd., NE., Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from points in Columbia County, Ark. to points in Louisiana, Mississippi and Alabama, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Arkansas-Louisiana Lumber Co., Emerson, Ark. Send protests to: District Supervisor Ray C. Armstrong, Jr., 701 Loyola Ave., 9037 Federal Bldg., New Orleans, La. 70113.

No. MC 142844 (Sub-No. 1TA), filed April 29, 1977. Applicant: DON HAUSAUER, doing business as DON HAUSAUER TRUCKING, Fort Lincoln Estates, Bismarck, N. Dak. 58501. Applicant's representative: F. J. Smith, Suite 307—MDU Office Bldg., 420 North Fourth Street, Bismarck, N. Dak. 58501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from points in Washington and Oregon to points in Minnesota and Wisconsin, under a continuing contract or contracts, with Owens Forest Products Company, for 180 days. Supporting shipper: Owens Forest Products Company, 2320 East First Street, Duluth, Minn. 55812. Send protests to: Ronall R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 23340, Fargo, N. Dak. 58102.

No. MC 143166TA, filed April 18, 1977. Applicant: WAYNE HELDERMAN TRUCKING COMPANY, Route 1, Box 152, Whitewater, Mo. 63785. Applicant's representative: Joseph J. Russell, 2027 Broadway, Cape Girardeau, Mo. 63701. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Mill feed*, in bulk or in bags, between points in Illinois, on the one hand, and, on the other, points in Cape Girardeau, Scott, Bollinger, Perry, Mississippi, Stoddard, Ste. Genevieve, New Madrid, Madison, Wayne, Butler, Dunkin, and Pemiscot Counties, Mo., for 180 days. Supporting shipper: There are approximately 4 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor, J. B. Werthmann, Interstate Commerce Commission, Bureau of Operations, Rm. 1465, 210 N. 12th St., St. Louis, Mo. 63101.

No. MC 143208TA, filed April 28, 1977. Applicant: SHENANDOAH RECYCLING, INC., P.O. Box 987, Waynesboro, Va. 22980. Applicant's representative: Richard J. Lee, 4070 Falstone Road, Richmond, Va. 23234. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metals* for recycling, between points in Virginia on the one hand, and, on the other, points in Pennsylvania, Maryland, West Virginia, North Carolina and Ohio, for 180 days. Applicant

also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are 4 statements of support attached to application which may be examined at the Interstate Commerce Commission, in Washington, D.C. or copies thereof which may be examined at the file office below. Send protests to: Danny R. Beeler, District Supervisor, Bureau of Operations, Interstate Commission, P.O. Box 210, Roanoke, Va. 24011.

No. W716 (Sub-No. 1TA) filed April 22, 1977. Applicant: FRANCIS F. FARRELL, 954 Hingham St., Rockland, Mass. 02370. Applicant's representative: L. Agnew Myers, Jr., 734-15th St. NW., Washington, D.C. 20005. Authority sought to operate as a common carrier, by self-propelled vessels, transporting: *Nuclear reactor pressure core structure and/or component parts*, from Portsmouth, N.H. to San Onofre and Long Beach, Calif., for 180 days. Supporting shipper: Combustion Engineering, Inc., 100 Prospect Hill Rd., Windsor, Conn. 06095. Send protests to: District Supervisor, John B. Thomas, Interstate Commerce Commission, 150 Causeway St., Room 501, Boston, Mass. 02114.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-14064 Filed 5-16-77;8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409), 5 U.S.C. 552b(e)(3).

CONTENTS

1

AGENCY HOLDING THE MEETING: National Mediation Board.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 22220, May 2, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m.; May 17, 1977.

CHANGES IN THE MEETING: Oral Argument in NMB Case No. R–4448 postponed until further notice.

Date of Notice: May 13, 1977.

[S–419–77 Filed 5–13–77;11:22 am]

2

AGENCY HOLDING THE MEETING: Consumer Product Safety Commission.

DATE AND TIME: May 13, 1977, 2:30 p.m.

LOCATION: 8th Floor Conference Room, 1111–18th St., NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: *CPSC Reorganization Plan.* The Commission will meet to continue its discussion of the reorganization plan proposed by Chairman Byington. In voting to hold the meeting and to close it to the public, the Commission also determined that Agency business required holding the meeting without seven days advance notice.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Suite 300, 1111–18th St., NW., Washington, DC 20207, telephone (202) 634–7700.

[S–420–77 Filed 5–13–77;11:22 am]

3

AGENCY HOLDING THE MEETING: Consumer Product Safety Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: May 3, 1977, 42 FR 22468.

PREVIOUSLY-ANNOUNCED TIME AND DATE OF MEETING: May 12, 1977, 9:30 a.m.

CHANGES IN THE MEETING: By majority vote, the Commission voted to add three items to its agenda, to delete one item, and to begin the meeting at 9:00 a.m. The added items are:

1. *CPSC Reorganization Plan* (Closed to the public) The Commission met to discuss the record of its action on reorganization plans which it discussed at a meeting on May 10.

2. *Congressional Testimony* (Open) This discussion concerned draft testimony for a hearing on Tris and a national carcinogen policy, which will be held May 16 by the Oversight and Investigation Subcommittee, House Committee on Interstate and Foreign Commerce.

3. *Tris Press Release* (Open) Before the Commission is a release on CPSC enforcement of its ban of Tris-treated products.

Deleted from the agenda:

Proposal to Seek a Consent Agreement and/or Notice of Enforcement: Flammable Fabrics Act Case (BCMI #6–548).

In voting to revise the agenda, the Commission determined that agency business required holding a meeting without seven days advance notice.

[S–421–77 Filed 5–13–77;11:22 am]

4

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: FEDERAL REGISTER of May 16, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 A.M., May 17, 1977.

CHANGES IN THE MEETING: Please add to the open section of the agenda—2. FY 1979 Planning and Report of the Task Group on Principal Management Objectives.

[S–418–77 Filed 5–12–77;4:37 pm]

5

AGENCY HOLDING THE MEETING: Federal Communications Commission.

TIME AND DATE: Approximately 10:45 a.m. (following the open meeting), Thursday, May 19, 1977.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Closed Commission Meeting.

MATTER TO BE CONSIDERED:

Agenda, Item No., and Subject

Hearing—1—Petitions for Reconsideration and related interlocutory pleadings in the George T. Hernreich (KAIT–TV), Jonesboro, Arkansas, television renewal proceeding (Docket No. 19292).

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Officer, telephone number (202) 632–7260.

Issued: May 12, 1977.

[S–413–77 Filed 5–12–77;3:49 pm]

6

AGENCY HOLDING THE MEETING: Federal Communications Commission.

TIME AND DATE: 9:30 a.m., Thursday, May 19, 1977.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

General—1—Amendment of Sections 1.46(b) and 1.415(e) dealing with granting of motions for extension of time for filing pleadings.

Common Carrier—1—Carpenter Radio Company's request to reopen Docket No. 18177, which was an inquiry into the terms and conditions of interconnection between Carpenter and Lima Telephone Company. United Telephone Company of Ohio has since purchased the Lima Telephone Company. Carpenter is also complaining about the quality of service it is obtaining from United.

Cable Television—1—Petition for Order to Show Cause (CSC–155) filed by WGAL Television, Inc., (WGAL–TV, NBC, Channel 8), Lancaster, Pennsylvania directed to Hamburg TV Cable, Inc.; and opposition filed by Hamburg TV Cable, Inc., and comments filed by Westinghouse Broadcasting, Inc.

Cable Television—2—Petition for Special Relief (CSR–948) filed by KVOS Television Corporation, licensee of Station KVOS–TV (CBS Channel 12), Bellingham, Washington.

Renewal—1—Application of Bob Jones University, Inc. for renewal of license for Station WMUU, Greenville, South Carolina (BR–2377).

Aural—1—Application for a construction permit for Montgomery City, Missouri, filed by Montgomery County Broadcasting Corporation (BPH-9844).

Aural—2—Request for an extension of authority to remain silent on behalf of Hex Country Radio, Inc., licensee of AM station WCLY, Columbia, Pennsylvania.

Television—1—Petition for Reconsideration by the Town of Oyster Bay, New York, directed against the Bureau action of July 1, 1975, granting the application of The Long Island Educational Television Council, Inc., to change the transmitter location of noncommercial educational broadcast station WLIW (TV), Garden City, New York.

Broadcast—1—Petition for Rule Making to require the broadcast licensee to annually broadcast and publish in a local newspaper its list of significant community problems (RM-2700).

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Officer, telephone number (202) 632-7260.

Issued: May 12, 1977.

[S-414-77 Filed 5-12-77;3:49 pm]

7

AGENCY HOLDING THE MEETING: Federal Communications Commission.

TIME AND DATE: 9:30 a.m., Wednesday, May 18, 1977.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special Open Commission Meeting.

MATTER TO BE CONSIDERED:

Agenda, Item No., and Subject

General—1—Implementation of Zero-Based Budget for Fiscal Year 1979.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Officer, telephone number (202) 632-7260.

Issued: May 11, 1977.

[S-415-77 Filed 5-12-77;3:49 pm]

8

AGENCY HOLDING THE MEETING: Federal Communications Commisison.

TIME AND DATE: Approximately 10 a.m. (following the special open meeting), Wednesday, May 18, 1977.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special Closed Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No. and Subject:

Special—1: Continuation of discussion of the Fifth Notice of Inquiry relative to preparation for the 1979 World Administrative Radio Conference (Docket No. 20271).

Special—2: The Bilingual Coalition on Mass Media, Inc. v. FCC, Chinese for Affirmative Action v. FCC, and Black Broadcasting Coalition of Richmond v. FCC cases.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Officer, telephone number (202) 632-7260.

Issued: May 11, 1977.

[S-416-77 Filed 5-12-77;3:49 pm]

9

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: 9:30 a.m., May 31, 1977.

PLACE: Hearing Room, 701 E Street NW., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Reorganization.
2. Agenda.
3. Minutes.
4. Ratifications.
5. Report on U.S. industries with high export potential.
6. Response to letter dated April 22, 1977, from the Administrative Conference of the United States (if a meeting is needed).

Portions closed to the public.

1. Reorganization (portions respecting the selection of personnel).

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary (202) 523-0161.

[S-417-77 Filed 5-12-77;3:49 pm]

10

AGENCY HOLDING THE MEETING: U.S. Commission on Civil Rights.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 24173, May 12, 1977.

PREVIOUS ANNOUNCED TIME AND DATE OF MEETING: May 12, 1977, 12 p.m.

CHANGES IN THE MEETING:

Meeting cancelled.

CONTACT PERSON FOR FURTHER INFORMATION:

Barbara Brooks, Public Affairs Unit (202-254-6697).

[S-412-77 Filed 5-12-77;3:38 pm]

11

HOLDING THE MEETING:

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, May 19, 1977, at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C. 20463.

STATUS: Portions of this meeting will be open to the public and portions will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion of meeting open to the public:

I. Future meetings.

II. Correction and approval of minutes.

III. Certification for presidential primary matching funds, Ellen McCormack.

IV. Request for copies of campaign contribution reports in public records.

V. Agency job classification actions.

Portion of meeting closed to the public:

VI. Executive session.

A. Presidential primary audit reports No. 3 and 4.
B. Compliance.
C. Personnel.

PERSON TO CONTACT FOR INFORMATION:

David Fiske, Press Officer, Telephone: 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commisison.

[S-411-77 Filed 5-13-77;2:57 pm]

12

AGENCY HOLDING MEETING: United States Parole Commission.

TIME AND DATE: Wednesday, May 25, 1977; 9 a.m. This meeting will be adjourned at close of business May 25, 1977 over May 26, 1977 and will resume at 9 a.m. on Friday, May 27, 1977.

PLACE: City Hall—501 Primrose Road, Burlingame, California (Burlingame, California is the location of the Western Regional Office of the Commission).

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Zero-based budgeting.* Report of the Executive Assistant to the Chairman on manner in which this method of budgeting now considered for government-wide operation will affect the Parole Commission.

2. *Guideline evaluation.* Report of Committee on Guideline Evaluation on a proposal or proposals to be considered by the Commission and, if approved, to be submitted for bids for an independent outside evaluation of the effectiveness of the Commission's guidelines. Additional future steps to implement this study will also be proposed.

3. *Changing reasons.* Changes to be effected by Regional Commissioners or Administrative Hearing Examiners.

4. *Report on Recent Case Law.*

5. *Hazardous duty.* Discussion of a Senate Bill (S-565) which provides certain benefits for hazardous duty employees.

6. *Recording preliminary interviews.* Consideration of whether or not to record such interviews and, if so, desired standard of record quality.

7. *Mandatory parole.* Suggested change in time allowed between ⅔ of sentence and hearing.

8. *Issues involving Bureau of Prisons.* Discussion with an Assistant Director, Bureau of Prisons, on recertification of Narcotic Addict Rehabilitation Act violators, file access, use of Bureau reports, and other matters of joint interest.

9. *New Appeal.* Provide for an appeal by any Commissioner to the Commission en banc for just cause.

10. *One-Third Hearings.* Problems raised by court decisions affecting possible elimination or reduction in the number of such hearings. Discussion of possible "contingency parole" procedures and their effect upon the one-third hearing. Consideration of related public comment.

11. *Proposed Guideline Revision.* Consideration of public comment received regarding proposed changes, certain modifications of the greatest severity category, and behavior patterns as affecting severity and predictability.

12. *Modification of Panel Recommendation.* Consideration of public comment received regarding Regional Commissioner's authority to extend panel recommendations to six months.

13. *Removal of limitation on Chairman's vote.* Consideration of public comment regarding procedures which allow Chairman to vote on all original jurisdiction appeals, where he formerly voted only when a Commissioner was absent.

14. *Committees.* Consideration of public comment on proposal that the Chairman appoint committees to study various subjects and make recommendations either to the Chairman or the Commission.

15. *Warrant Applications.* Timeliness of convictions used on warrant applications.

16. *Supplemental Warrants.* Proposal to discontinue sending applications for supplemental warrants to the F.B.I.

17. *Lists of intelligence personnel.* Proposal to exchange such lists for information purposes with Department of Justice.

18. *Original Jurisdiction references.* Proposal to contact Department of Justice when certain cases are referred, and to set up employee conferences with the Department.

19. *Waiver.* Proposal waiver of hearing at the ⅔ points in serving a sentence.

20. *Modification of sentence.* Consideration by the Commissioner as a new item of information.

21. *Modification of sentence.* Proposal to oppose any such modifications made after the 120 day period provided by Court Rules.

22. *Absence of Regional Commissioner.* Consideration of possible change in temporary replacement procedures.

23. *Notices of Action on Appeal.* Decide if copies should be sent to inmates' attorneys.

24. *Local Revocation Hearings.* Advise examiners concerning the announcement of decisions and reasons following such hearings.

25. *Summonses and Warrants.* Use of the above relating to preliminary interviews and revocation hearings.

26. *Improvement and Recording Hearings.* Report on improving recording equipment and methodology and consideration of alternatives to methods presently in use.

27. *Examiners.* Basis of disqualification of an examiner from holding certain hearings.

28. *Evaluations—Hearing Examiner Meetings.* Discussion of the evaluations made by examiners following the last Hearing Examiners Meeting.

29. *Guidelines—Community Program placement prior to hearings.* Discussion of Bureau of Prisons guidelines and memo on subject.

30. *Training.* Interregional work-training assignments for examiners.

31. *Forms Approval Procedure.* Proposal for circulation to Commissioners and staff using respective forms.

32. *Forms Modification.* Proposed revision of several forms.

33. *Appeal Criteria.* Proposal to increase present grounds for appeal to six and to indicate ground or grounds relied upon in documentation supporting appeal.

34. *Advisory Corrections Council Meeting.* Report by Acting Chairman Crawford of the activities at said meeting.

CONTACT PERSONS FOR MORE INFORMATION:

M. E. Malin Foehrkolb (Washington, D.C.), 202–724–3117.

Helen Moniz (Burlingame, California), 415–347–4737).

[S–405–77 Filed 5–12–77;12:59 pm]

13

AGENCY HOLDING MEETING: United States Parole Commission.

TIME AND DATE: Thursday, May 26, 1977; 9 a.m.

PLACE: City Hall—501 Primrose Road, Burlingame, California. (Burlingame, California, is the location of the Western Regional Office of the Commission.)

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Appeals to the Commission of approximately 32 cases decided by National Commissioners pursuant to a reference under 28 CFR § 2.17 and appealed pursuant to 28 CFR § 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

Daniel J. Capodanno, Case Analyst—(415)–347–4737.

[S–404–77 Filed 5–12–77;12:59 pm]

14

AGENCY HOLDING MEETING: United States Parole Commission.

TIME AND DATE: Friday, May 27, 1977 at 10:15 a.m.

PLACE: City Hall—501 Primrose Road, Burlingame, California. (Burlingame, California, is the location of the Western Regional Office of the Commission.)

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Report of Budget Committee for purpose of Commission approval of a fiscal year 1979 budget submission to Office of Management and Budget and the Congress; and for such other elements of fiscal planning and action as may be required.

2. Discussion of potential items for a fiscal year 1978 supplemental budget.

3. Legal Report—Discussion of strategy and steps taken and planned in litigation and precedents, statutes and regulations underlying such legal activity.

4. Report of Personnel and Training Committee for purposes of Commission action on location of examiners, filling certain positions, evaluation and problems involving specified employees, orientation of new personnel, and other internal personnel policies and practices.

5. Pending legislation—Formulation of the Commission's approach to S. 1437, H.R. 6862 and other legislation affecting its authority and/or structure.

CONTACT PERSONS FOR MORE INFORMATION:

M. E. Malin Foehrkolb (Washington, D.C.), 202–724–3117.

Helen Moniz (Burlingame, California), 415–347–4737.

[S–403–77 Filed 5–12–77;12:59 pm]

15

AGENCY HOLDING MEETING: Federal Power Commission.

TIME AND DATE: May 18, 1977, 2 p.m.

PLACE: 825 North Capitol Street, Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: (Agenda), *Note-Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, Telephone (202) 275–4166.

This is a list of the matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the Office of Public Information, Room 1000.

POWER AGENDA—7614TH MEETING, MAY 18, 1977, REGULAR MEETING, PART I (2 P.M.)

P-1—Docket No. ER77-313, Union Light Heat and Power Company.
P-2—Docket No. E-7453 (Jordan), Iowa-Illinois Electric Company.
P-3—Docket No. E-8927, Pennsylvania Power and Light Company.
P-4—Docket No. ER76-221, Potomac Edison Company.
P-5—Docket No. ER76-285, Public Service Company of New Hampshire.
P-6—Docket Nos. E-7631 and E-7633, *City of Cleveland, Ohio* v. *Cleveland Electric Illuminating Company;* Docket No. E-7713, City of Cleveland, Ohio.
P-7—Docket No. E-9306, Nevada Power Company.
P-8—Docket Nos. ER76-303 and ER76-399, Wisconsin Electric Power Company, Wisconsin Michigan Power Company.
P-9—Docket No. ER76-818, Northern States Power Company (Minnesota).
P-10—Docket No. ER76-739, Kentucky-Indiana Power Pool Agreement.
P-11—Docket No. E-7172, U.S. Department of the Interior Southwestern Power Administration.
P-12—Docket No. E-9581, Potomac Edison Company.
P-13—Docket No. E-9578, Texas Power & Light Company.
P-14—Docket Nos. E-8769, E-8770, E-9119, ER76-216, ER76-218 and ER76-219, Florida Power & Light Company.
P-15—Docket No. ES77-29, Iowa Electric Light and Power Company.
P-16—Project No. 2683, Crown Zellerback Corporation.

MISCELLANEOUS AGENDA—7614TH MEETING, MAY 18, 1977, REGULAR MEETING, PART I

M-1—Docket No, RM76-29, policy statement concerning electric rate schedule filings and the requirement for filing of comparative rate information in certain situations.
M-2—Reserved.
M-3—Reserved.
M-4—Docket No. RM77-11, corrections, minor revisions, and clarifications to certain sections of title 18 of the Code of Federal Regulations.
M-5—Docket No. RM76-24, petition of certain utilities and others for amendment of 18 CFR § 1.4(d) to facilitate settlement or disposition of particular issues in proceedings before the Commission.
M-6—Docket No. RM76-17, research development and demonstration: Accounting: Advance approval of rate treatment.
M-7—Reserved.
M-8—Reserved.
M-9—Docket No. RM- , proposal by the Federal Power Commission relating to the incorporation of compensation provisions in curtailment plan.
M-10—Emergency supplies of natural gas to pipelines and distributors.
M-11—Carnegie Natural Gas Company.
M-12—Sabine Pipe Line Company.

GAS AGENDA—7614TH MEETING, MAY 18, 1977, REGULAR MEETING—PART I

G-1—Docket No. RP75-73, Texas Eastern Transmission Corporation.
G-2—Docket No. RP77-48, Transcontinental Gas Pipe Line Corporation.
G-3—Docket Nos. RP76-15 and RP76-98, Algonquin Gas Transmission Company.
G-4—Docket Nos. RP73-109 and RP74-95 (AP76-1), Northwest Pipeline Corporation.
G-5—Docket No. RP75-62, Cities Service Gas Company.
G-6—Docket No. RP76-38, *Arizona Electric Power Cooperative, Inc., and the City of Willcox, Arizona* v. *El Paso Natural Gas Company.*
G-7—Docket No. RP77-36, City of Philadelphia, Philadelphia Gas Works.
G-8—Docket No. RI77-24, George Heeter, d.b.a. Venture Gas Company.
G-9—FPC Gas Rate Schedule Nos. 554, 555, 556, 557, 559 and 560, Phillips Petroleum Company; FPC Gas Rate Schedule Nos. 537, 538, 539, 561, 562, 567, 569, 572, 576 and 577, Sun Oil Company.
G-10—Docket No. CS71-988, Damson Oil Corporation; Docket No. CS77-262, Ergon, Inc.; Docket No. CS73-208, H & L Operating Company; Docket No. CS72-912, Manana Gas Inc.; Docket No. CS71-22, Northern Pump Company.
G-11—FPC Gas Rate Schedule Nos. 47 and 202, Gulf Oil Corporation; FPC Gas Rate Schedule No. 50, Mesa Petroleum Company.
G-12—FPC Gas Rate Schedule Nos. 1, 3, 7 and 31, Aztec Oil & Gas Company; FPC Gas Rate Schedule No. 26, Union Texas Petroleum, a division of Allied Chemical Corporation.
G-13—Docket No. CI75-45 et al., Tenneco Oil Company.
G-14—Docket No. CI77-70, Getty Oil Company (formerly Skelly Oil Company).
G-15—Docket No. CI74-319, James M. Forgotson, operator for Gulf Coast Venture.
G-16—Docket No. CI76-743, Ladd Petroleum Corporation.
G-17—Docket No. CS71-631, Eason Oil Company; Docket No. CS76-842, Devon Corporation.
G-18—Docket Nos. CP74-289, CP73-334 and CP75-360, El Paso Natural Gas Company.
G-19—Docket No. CP74-299, Kansas-Nebraska Natural Gas Company, Inc.
G-20—Docket Nos. CP75-131 and CP76-129, Mountain Fuel Supply Corporation; Docket No. CP76-94, Phillips Petroleum Company.
G-21—Docket No. CP74-329, *Atlanta Gas Light Company, Applicant* v. *Southern Natural Gas Company, Respondent.*
G-22—Docket No. CP77-38, Tennessee Gas Pipeline, a division of Tenneco, Inc. and National Fuel Gas Supply Corporation.
G-23—Docket No. CP77-106, Mississippi River Transmission Company; Docket No. CP77-131, Natural Gas Pipeline Company of America.
G-24—Docket No. CP77-183, Columbia Gas Transmission Corporation.
G-25—Docket No. CP69-199, Transcontinental Gas Pipe Line Corporation; Docket No. CP77-107, Gas Gathering Corporation.
G-26—Docket No. CP76-511, Natural Gas Pipeline Company of America; Docket No. CP77-106, Mississippi River Transmission Corporation; Docket No. CP77-131, Natural Gas Pipeline Company of America.
G-27—Docket No. CP75-126, Northern Natural Gas Company.
G-28—Docket No. CP76-248, Sea Robin Pipeline Company.
G-29—Docket No. CP77-342, Tennessee Gas Pipeline Company.

POWER AGENDA—7614TH MEETING, MAY 18, 1977, REGULAR MEETING, PART II

CP-1—Docket No. ER77-221, Kentucky Utilities Company.
CP-2—Docket No. ER77-308, Louisville Gas & Electric Company.
CP-3—Docket No. ER77-266, Otter Tail Power Company.
CP-4—Docket No. ES77-5, Iowa Public Service Company.
CP-5—Docket No. ES77-27, Montana-Dakota Utilities Company.
CP-6—Docket No. ES77-28, Minnesota Power & Light Company.
CP-7—Docket No. E-9259, Long Island Lighting Company.
CP-8—Project No. 1989, Wisconsin Public Service Corporation.
CP-9—Project No. 2113, Wisconsin Valley Improvement Company.
CP-10—Project No. 2761, El Dorado County Water Agency.
CP-11—*Papago Tribal Utility Authority et al.* v. *F.P.C.*, D.C. Cir. No. 76-1937 (ER76-530).
CP-12—Project No. 2709, Monongahela Power Company, Potomac Edison Company, West Penn Power Company.

MISCELLANEOUS AGENDA—7614TH MEETING, MAY 18, 1977, REGULAR MEETING, PART II

CM-1—Upper White River Basin in Missouri and lower White River Basin in Missouri and Arkansas.
CM-2—Great Miami subregion portion of the Ohio River Basin Commission's comprehensive coordinated joint plan.
CM-3—Wabash subregion portion of the Ohio River Basin Commission's comprehensive coordinated joint plan.
CM-4—Reserved.
CM-5—Reserved.
CM-6—Blue Dolphin Pipe Line Company.
CM-7—Transwestern Pipeline Company.

GAS AGENDA—7614TH MEETING, MAY 18, 1977, REGULAR MEETING, PART II

CG-1—Docket No. RP74-100 (PGA Nos. 77-5 and 77-5A), National Fuel Gas Supply Corporation.
CG-2—Docket No. RP69-19 and RP72-157, Consolidated Gas Supply Corporation.
CG-3—Docket Nos. AR61-2, AR69-1 and RP74-41, Texas Eastern Transmission Corporation.
CG-4—Kerr-McGee Corporation, FPC Gas Rate Schedule No. 74.
CG-5—Docket No. CI76-268, Phillips Petroleum Company, Docket No. CI77-157, Amoco Production Company; Docket No. CI77-262, Union Oil Company of California.
CG-6—Docket No. CI60-466, et al., Cabot Corporation, et al.
CG-7—Docket No. CI62-1184, et al., Atlantic Richfield Company, et al.
CG-8—Docket No. G-7241, et al., Aztec Oil and Gas Company, et al.
CG-9—Docket No. CP77-184, Columbia Gas Transmisson Corporation.
CG-10—Docket No. CP77-334, Trunkline Gas Company.
CG-11—Docket No. CP77-206, Texas Eastern Transmission Corporation.
CG-12—Docket No. CP76-168, Transcontinental Gas Pipe Line Corporation.
CG-13—Docket No. CP77-135, Natural Gas Pipeline Company of America; Docket No. CP77-260, Texas Eastern Transmission Corporation.
CG-14—Docket No. CP77-292, Florida Gas Tranmission Company.
CG-15—Docket No. CP77-233, El Paso Natural Gas Company.
CG-16—Docket No. CP77-228, United Gas Pipe Line Company, Arkansas Louisiana Gas Company.
CG-17—Docket No. CP76-396, Consolidated Gas Supply Corporation.
CG-18—Docket No. CP77-84, Northern Natural Gas Company, operating as Peoples Natural Gas Division, Docket No. CP77-169, Panhandle Eastern Pipe Line Company.
CG-19—Docket No. CP77-293, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CG-20—Docket No. CP77-99, Northern Natural Gas Company.
CG-21—Docket No. CP76-311, Tennessee Gas Pipeline Company.
CG-22—Docket No. CP76-467, Michigan Wisconsin Pipeline Company.

CG-23—Docket Nos. CI75-173, CI77-131, CI77-149, CI77-199, CI77-255 and CI77-266, Gulf Oil Corporation.

KENNETH F. PLUMB,
Secretary.

[S-409-77 Filed 5-12-77; 12:08 pm]

16

AGENCY HOLDING THE MEETING: Occupational Safety and Health Review Commission.

TIME AND DATE: 9 a.m., May 16, 1977.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: This meeting is subject to being closed by a vote of the Commissioners taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED:

Discussion of specific cases in the Commission adjudication process.

CONTACT PERSONS FOR MORE INFORMATION:

Mrs. Nori Heuberger or Ms. Lottie Richardson (202) 634-7970.

For the Commission.

Dated: May 12, 177.

PAUL R. WALLACE,
Counsel to the Commission.

[S-406-77 Filed 5-12-77;11:53 am]

17

AGENCY HOLDING MEETING: Federal Reserve System.

NOTICE OF CHANGE IN SUBJECT OF MEETING

The previously announced meeting of the Board of Governors of the Federal Reserve System on May 11, 1977, included additional items:

1. Extension of the delegation of administrative responsibility to the Chairman of the Board of Governors to include approval of intradivisional organizational changes.

2. Reorganization of staff and related reallocation of budgeted funds within the Board of Governors.

The business of the Board required that the items be added, and no earlier announcement of the change was possible.

These items were closed to public observation because the items fall under exemption(s) in the Government in the Sunshine Act (5 U.S.C. § 552b(c)).

The previously announced closed items were:

1. Possible amendments to Section 23A of the Federal Reserve Act to be submitted to the House and Senate Banking Committees.

2. Possible candidates for a position at a Federal Reserve Bank.

The meeting was held at 10 a.m. in the Board's offices at 20th Street and Constitution Avenue NW., Washington, D.C. Information may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at (202) 452-3204.

Board of Governors of the Federal Reserve System, May 11, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-407-77 Filed 5-12-77;11:53 am]

18

AGENCY HOLDING THE MEETING: Federal Reserve System.

ADDITION OF PREVIOUSLY ANNOUNCED AGENDA ITEM

The Board of Governors has previously announced a meeting to be held on Monday, May 16, 1977, which will be closed to public observation under exemption(s) of the Government in the Sunshine Act (5 U.S.C. § 552b(c)). One of the items announced for inclusion at that meeting was consideration of any agenda items carried forward from a previous meeting. The purpose of this announcement is to inform the public that the following such items, postponed from Wednesday, May 11, 1977, will be considered at this meeting:

1. Extension of the delegation of administrative responsibility to the Chairman of the Board of Governors to include approval of intradivisional organizational changes.

2. Reorganization of staff and related reallocation of budgeted funds within the Board of Governors.

The previously announced closed item is:

1. Possible amendments to Section 23A of the Federal Reserve Act to be submitted to the House and Senate Banking Committees.

The meeting will be held at 10 a.m. in the Board's offices at 20th Street and Constitution Avenue NW., Washington, D.C. Information may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at (202) 452-3204.

Board of Governors of the Federal Reserve System, May 11, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-408-77 Filed 5-12-77;11:53 am]

Federal Register

TUESDAY, MAY 17, 1977

PART II

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

■

NATIONAL FLOOD INSURANCE PROGRAM

Final and Proposed Flood Elevation Determinations

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-2604]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Oroville, Okanogan County, Washington

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final Rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of his final determinations of flood elevations for the Town of Oroville, Okanogan County, Washington, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917).

Final Base Flood Elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the lobby of the Town Hall, 1308 Ironwood, Oroville.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, Southwest, Washington, D.C. 20410.

DATES: In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community. The effective date of the Flood Insurance Rate Maps will be published in the Federal Register under Part 1915.4.

SUPPLEMENTARY INFORMATION: The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above national geodetic vertical datum, 1929
Okanogan River	Burlington Northern RR. Bridge.	917.6
	Cherry Street Bridge	918.0
Similkameen River	Downstream corporate limits (extended).	914.2
	Twelfth Avenue Bridge.	924.5

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968); effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4011-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-13642 Filed 5-16-77;8:45 am]

[Docket No. FI-2584]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Brookneal, Campbell County, Virginia

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of his final determinations of flood elevations for the Town of Brookneal, Campbell County, Virginia, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917).

Final Base Flood Elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Town Hall, Brookneal, Virginia.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, Southwest, Washington, D.C. 20410.

DATES: In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community. The effective date of the Flood Insurance Rate Maps will be published in the FEDERAL REGISTER under Part 1915.4.

SUPPLEMENTARY INFORMATION: The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Roanoke River	Southwest corporate limits.	391
	North side of U.S. 501.	390
	Carolina Ave. (extended).	390
	Southeast corporate limits.	389
Falling River	North side of Va. 40	393
	820 ft north of Va. 40	393
	Southeast corporate limits.	392

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4011-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-13643 Filed 5-16-77;8:45 am]

[Docket No. FI-2554]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Honeoye Falls, Monroe County, New York

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of his final determinations of flood elevations for the Village of Honeoye Falls, Monroe County, New York, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93-234), 87 Stat. 980, which added Section 1363 to the Na-

tional Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (P.L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917).

Final Base Flood Elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Village Office, 5 East Street, Honeoye Falls.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, Southwest, Washington, D.C. 20410.

DATES: In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community. The effective date of the Flood Insurance Rate Maps will be published in the FEDERAL REGISTER under Part 1915.4.

SUPPLEMENTARY INFORMATION: The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Honeoye Creek	Northwest corporate limit.	592
	Lehigh Valley R.R.	596
	North Main St. (NYS 65).	617
	East St. (NYS 65)	642
	Ontario St.	688

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4011-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-13644 Filed 5-16-77;8:45 am]

[Docket No. FI-2692]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Evans, Erie County, New York

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of his final determinations of flood elevations for the Town of Evans, Erie County, New York, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917).

Final base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the bulletin board in Evans Town Hall, 42 North Main Street, Angola.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, Southwest, Washington, D.C. 20410.

DATES: In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

SUPPLEMENTARY INFORMATION: The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from shoreline to 100-yr flood boundary
Lake Erie	1,000 ft southwest of Eighteenmile Creek Mouth	580	20
	90° from Lake Shore Rd. at Hamilton Dr.	580	60
	Delameter Rd. (extended)	580	50
	New Haven Rd. (extended)	580	80
	Larkin Rd. (extended)	579	80
	North of Shell Rd.	579	1,600
	South of Shell Rd. (extended)	579	140
	Ainsworth Rd.	579	(1)
	Westminster Rd.	579	(2)
	Beach Rd. (extended)	579	100
	Waterman Rd. (extended)	579	140
	Central Ave. (extended)	579	30
	Braywood Ave. (extended)	579	100
	Point Breeze	579	100
	Summerdale Dr. (extended)	579	60
	South corporate limits	579	80

[1] 850 ft along Ainsworth from Lake Shore Rd.
[2] 800 ft along Westminster from Lake Shore Rd.

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-year flood boundary facing downstream	
			Left	Right
Muddy Creek	Lake Shore Rd.	583	20	280
	Pearl St. (extended)	586	320	80
	Oakland St.	588	320	100
	Reeves Rd.	589	760	200
	Corporate limits	591	180	300
Delaware Creek	Lake Shore Rd.	580	20	20
	Birch St.	588	40	340
	Herr Rd.	609	20	320
	Norfolk-Western R.R.	645	20	80
	Holland Rd.	653	60	260
	Corporate limits	661	380	170
Big Sister Creek	Lake Shore Rd.	582	270	430
	Dennis Rd. (extended)	589	200	380
	Route 5	606	60	240
	Gold St.	608	70	40
	North corporate limit of Angola	621	60	70
	East corporate limit of Angola (extended).	644	70	280
	Route 20	655	10	100
	Route 90	666	20	20
	Ryther Rd.	680	90	50
	Derby Rd.	699	40	50
	Pontale Rd.	710	20	120
	South corporate limit	738	20	20
Eighteenmile Creek	Lake Shore Rd.	581	50	(1)
	Route 5	586	20	(1)
	Norfolk-Western R.R.	601	20	(1)
	Versailles Rd.	613	50	(1)
	Town of Eden corporate limits	622	20	(1)

[1] Corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77–13645 Filed 5–16–77;8:45 am]

[Docket No. FI–2676]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Momence, Kankakee County, Illinois

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of his final determinations of flood elevations for the City of Momence, Kankakee County, Illinois, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917).

Final Base Flood Elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the City Hall, 123 West River Street, Momence, Illinois.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, Southwest, Washington, DC 20410.

DATES: In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community. The effective date of the Flood Insurance Rate Maps will be published in the FEDERAL REGISTER under Part 1915.4.

SUPPLEMENTARY INFORMATION: The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Kankakee River	West corporate limits	615
	Elm St. (extended)	616
Kankakee River, main channel.	Dixie Highway, 100 ft downstream of Chicago & Eastern Illinois R.R.	617
	East corporate limits	620
Kankakee River, (north channel).	Dixie Highway	618
	Ash St. (extended)	619
	East corporate limits	620

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4011–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77–13646 Filed 5–16–77;8:45 am]

[Docket No. FI–2668]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Manteno, Kankakee County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of his final determinations of flood elevations for the Village of Manteno, Kankakee County, Illinois, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917).

Final Base Flood Elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Village Hall on the Bulletin Board, 269 North Main Street, Manteno, Illinois.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, Southwest, Washington, D.C. 20410.

DATES: In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community. The effective date of the Flood Insurance Rate Maps will be published in the FEDERAL REGISTER under Part 1915.4.

SUPPLEMENTARY INFORMATION: The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
South Branch of Rock Creek.	100 ft upstream of I.C. Railroad Bridge.	662
	West corporate limits	665

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4011–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77–13647 Filed 5–16–77;8:45 am]

[Docket No. FI–2677]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Aroma Park, Kankakee County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of his final determinations of flood elevations for the Village of Aroma Park, Kankakee County, Illinois, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development

Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917).

Final Base Flood Elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the bulletin board, West Front Street, Aroma Park, Illinois.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, Southwest, Washington, D.C. 20410.

DATES: In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community. The effective date of the Flood Insurance Rate Maps will be published in the FEDERAL REGISTER under Part 1915.4.

SUPPLEMENTARY INFORMATION: The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Kankakee River	State Highway 3 and 315 bridge.	609
	New York Central railroad bridge.	609

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4011-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-13648 Filed 5-16-77;8:45 am]

[Docket No. FI-2657]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Itasca, Du Page County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of his final determinations of flood elevations for the Village of Itasca, Du Page County, Illinois, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917).

Final Base Flood Elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Village Hall, 100 North Walnut Street, Itasca, Illinois.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, Southwest, Washington, D.C. 20410.

DATES: In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community. The effective date of the Flood Insurance Rate Maps will be published in the FEDERAL REGISTER under Part 1915.4.

SUPPLEMENTARY INFORMATION: The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Spring Brook	Rohlwing Rd.	689
	Valley Rd.	688
	Walnut Ave.	686
	Prospect Ave.	681
Salt Creek	Thorndale Ave.	652
	Industrial Rd. (extended).	681
Meacham Creek	Medinah Rd.	716
	Corporate limits	716
Devon Avenue Tributary.	North corporate limit (Devon Ave.).	656
	Pierce Rd.	657

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4011-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-13649 Filed 5-16-77;8:45 am]

[Docket No. FI-1142]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Greenwich, Connecticut

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of his final determinations of flood elevations for the Town of Greenwich, Connecticut, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917).

Final base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Town Hall, Greenwich Avenue, Greenwich, Connecticut 06830.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, Southwest, Washington, D.C. 20410.

DATES: In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

SUPPLEMENTARY INFORMATION: The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Byram River	Riversville Rd	153.0
	Peckland Rd	137.2
	Glenville Rd	119.0
	Comly Ave	42.4
	Putnam Ave	16.6
	Putnam Ave	14.8
East Brothers Brook	Cardinal Rd	53.9
	Fairfield Ave	51.0
	Brook Ridge Dr	45.5
	West Rd	13.6
	Dam (Connecticut Turnpike)	12.5
	Valley Rd	74.8
Mianus River	Palmer Hill Rd	22.8

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: April 13, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-13650 Filed 5-16-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-2885]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Lyndon, Vermont

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the Town of Lyndon, Vermont, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Harold Dresser, Jr., Chairman, Board of Selectmen, Lyndonville, Vermont 05851.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, Southwest, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Town Hall, 24 Main Street, Lyndonville, Vermont 05851.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Passumpsic River	Railroad bridge	689
	U.S. 5	707
	Vermont 122	708
	At confluence with Millers Run.	709
	U.S. 5	709
	Vermont 114	711
	Railroad bridge	716
	Vermont 114	717
	TH 36	718
	TH 40	741
	Vermont 114	732
Calendar Brook	Route 5	734
Hawkins Brook	TH 69	683
	TH 6	703
Millers Run	Vermont 122	709
	I-91	714
	TH 31	718
Wheelock Branch	SA 10	708
	I-91	708
	TH 1	708
	TH 82	709

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-13634 Filed 5-16-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2886]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Georgetown, Georgetown County, South Carolina

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Georgetown, Georgetown County, South Carolina, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1969 (Title XIII of the Housing and Urban Development Act of 1968 P.L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable Douglas L. Hinds, Mayor of Georgetown, Drawer 939, Georgetown, South Carolina 29440.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, Southwest, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by Section 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the lobby of the Municipal Building, 1114 Front Street, Georgetown, South Carolina.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Atlantic Ocean (Winyah Bay, Sampit and Pee Dee Rivers).	Fogel St.	13
	Poplar St.	12
	Meeting St.	12
	Fraser St.	11
	Collins St.	11

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-13635 Filed 5-16-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2887]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Lakewood, Cuyahoga County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Lakewood, Cuyahoga County, Ohio, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable William E. Blackie, Mayor of Lakewood, 1265 Detroit Avenue, Lakewood, Ohio 44107.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, Southwest, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by Section 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the City Hall on the Bulletin Board, 12650 Detroit Avenue, Lakewood, Ohio.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Rocky River	Upstream corporate limits.	607
	Abandoned Ford Park Dr.	603
	Sewer at sewage treatment plant.	595
	Park Dr	586
	Detroit Ave	579
	Lake Rd	576

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-13636 Filed 5-16-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2888]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Fayetteville, N.C.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Fayetteville, Cumberland County, North Carolina, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917. Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. William G. Thomas, City Manager, Fayetteville, North Carolina.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by Section 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the City Inspection Office, City Hall, Fayetteville, North Carolina.

The proposed 100-year Flood Eelevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Cape Fear River	Upstream corporate limits.	91
	Highway 301	84
	Person St	83
	Downstream corporate limits.	82
Locks Creek	Person St	83
	Interstate 95	83
Buzzards Branch	Clinton Rd	83
Cross Creek	Highway 301	84
	Upstream of Anderson St.	91
	Upstream of central business loop.	100
	Upstream of Langdon St.	118
	Upstream corporate limits.	133
Blounts Creek	Hawley Lane	84
	Upstream of Gillespie St.	93
	Upstream of Whitfield St.	112
	Downstream of Owen Dr.	140
Branson Creek	Upstream of Robeson St.	105
	Upstream of Raeford St.	130
	Upstream of Murray Hill Rd.	178
	Upstream of Cliffdale Rd.	190
Hybarts Branch	Upstream of Mirror Lake Dr.	144
	Upstream of Morganton Rd.	161
	Upstream of Skye Dr.	188
Dark Branch	Upstream of Village Dr.	150
Little Cross Creek	Upstream of Jackson Ave.	103
	Downstream of Pamalee Rd.	133
Eutaw Creek	Upstream of McGougan Rd.	130
	Downstream of Stamper Rd.	158
Cool Spring Branch.	Upstream of Forest Hill Dr.	133
	Corporate limits	170
Country Club Branch.	Upstream of Rosehill Rd.	125
	Upstream of Country Club Dr.	139
	Downstream of Hilliard Dr.	147
Cedar Falls Creek	Downstream of Highway 401.	108
	Upstream corporate limits.	145

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: April 27, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-13637 Filed 5-16-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2889]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Village of Nehawka, Nebr.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the Village of Nehawka, Nebraska, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917. Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Raymond Anderson, Nehawka, Nebraska 68413.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by Section 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Village Clerk's Office, Nehawka, Nebraska 68413.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Weeping Water Creek.	Nebraska Highway 734.	906

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

HOWARD J. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-13638 Filed 5-16-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2890]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Funkstown, Washington County, Md.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the Town of Funkstown, Washington County, Maryland, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917. Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable Harvey Kersher, Mayor of Funkstown, Westside and Baltimore Streets, Funkstown, Maryland 21734.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact strict requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Fire Hall, Westside and Baltimore Streets, Funktown, Maryland.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Antietam Creek	Interstate 70	459
	Downstream of Ridge Rd.	462
	Upstream of Baltimore St.	469

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 23, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-13639 Filed 5-16-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2891]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Frederick, Frederick County, Md.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Frederick, Frederick County, Maryland, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1068 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917. Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Honorable Ronald N. Young, Mayor of Frederick, City Hall, Frederick, Maryland 21701.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by Section 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the front reception area of City Hall, City Hall, Frederick, Maryland.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Carroll Creek	Confluence with Monocacy River	271
	Highland St	271
	Wisner St	275
	Carroll St	280
	South Court St	286
	Bentz Ave	287
	College Ave	289
	College Terrace	294
	Fairview Ave	299
	Shookstown Rd	308
	Baughman's Lane	310
Rock Creek	Confluence with Carroll Creek	308
	Baughman's Lane	313
	Confluence with tributary No. 5.	325
	Willowdale Dr	330
	Waverly Dr	369
	Private Rd (corporate limits).	434
Tributary No. 5	Confluence with Rock Creek.	325
Tributary No. 6	West Patrick St	302
	Valley St	312
	Braddock Ave	318
	Unnamed road crossing upstream of Interstate 15.	348
Tributary No. 8	East corporate limits	272
	Fairview Ave	317
Tributary No. 9	East corporate limits	274
	North Market St	281
Tributary No. 10	North corporate limits.	274
Tributary No. 11	North corporate limits.	274

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: April 27, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-13640 Filed 5-16-77;8:45 am]

Federal Register

TUESDAY, MAY 17, 1977

PART III

FEDERAL ENERGY ADMINISTRATION

■

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Notice of Intention To Issue Construction Orders to Certain Major Fuel Burning Installations

FEDERAL ENERGY ADMINISTRATION

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Notice of Intention To Issue Construction Orders to Certain Major Fuel Burning Installations

The Federal Energy Administration (FEA) hereby gives notice of its intention to issue Construction Orders pursuant to section 2(c) of the Energy Supply and Environmental Coordination Act of 1974, as amended (ESECA), and Title 10, Code of Federal Regulations (10 CFR), Parts 303 and 307 to the following installations in the early planning process:

Docket No.	Owner	Installation	Number of units	Location
OCU-0540-2-1 OCU-0540-2-2	Anheuser-Busch, Inc.	Williamsburg Brewery	2	Williamsburg, Va.
OCU-0900-1-1	Supervisory committee of Bellefield boiler plant.	Bellefield boiler plant	1	Pittsburgh, Pa.
OCU-1050-1-1	Boeing Co.	Boeing Vertol	1	Ridley Township, Pa.

FEA hereby also gives notice of the opportunity for written and oral presentation of data, views and arguments by interested persons regarding these proposed Construction Orders.

The proposed orders would require the above-named installations in the early planning process to be designed and constructed to be capable of using coal as their primary energy source.

Prior to the issuance of a Construction Order to an installation, section 2(c) of ESECA and 10 CFR 303.46(b), 307.3(b), and 307.3(c) require that FEA find that the installation is in the early planning process. A Construction Order may not be issued if FEA finds that an adequate and reliable supply of coal and coal transportation facilities are not reasonably expected to be available. FEA's proposed findings, as well as its proposed conclusions and rationale with respect to these findings, for the installation are set out in Section I of the Appendix to this notice. These findings, conclusions and rationale may be amended as a result of comments received by FEA pursuant to this notice and other information available to FEA. The findings, conclusions and rationale will be included, with any amendments, in the Construction Order if it is issued.

In addition, section 2(c) of ESECA and 10 CFR 303.46(b) and 307.3(d) require that FEA consider certain other factors prior to issuance of a Construction Order. FEA's initial conclusions and a brief statement of the rationale for each, with respect to such considerations, are set out in Section II of the Appendix to this notice. The conclusions and rationale may be amended as a result of comments received by FEA pursuant to this notice and other information available to FEA. The conclusions and rationale will be included with any amendments, in the Construction Order if it is issued.

Upon completion of the proceeding described in this notice, FEA may determine to issue Construction Orders to some or all of the above-named installations. The Construction Orders will not become effective, however, until FEA has considered the environmental impact of each order, pursuant to 10 CFR 208.3(a)(4) and 307.7, and has served the affected installation with a Notice of Effectiveness, as provided in 10 CFR 303.10(b), 303.47(b) and 307.5. 10 CFR 307.7(c) required that, prior to the issuance of a Notice of Effectiveness to an installation, FEA shall perform an analysis of the environmental impact of the issuance of such notice of effectiveness. That analysis shall result in either 1) a declaration that the Construction Order will not, if made effective by a Notice of Effectiveness, be likely to have a significant impact on the quality of the human environment; or, 2) the preparation by FEA of an environmental impact statement covering the significant site-specific impacts that are likely to result from the Construction Order and that have not been adequately addressed in the Final Programmatic Environmental Impact Statement or in other official documents made publicly available. If FEA prepares an environmental impact statement covering significant site-specific impacts from the Construction Order, the statement shall be prepared and published for comment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 prior to issuance of a notice of effectiveness. Interested persons may request a public hearing pursuant to 10 CFR 303.173 to comment on the contents of a draft environmental impact statement.

Public comment on the proposal to issue a Construction Order to the installation(s) listed above is invited in the form of written and oral presentation of data, views and arguments.

Comments should address (1) the adequacy and validity of each of the proposed findings and the conclusions and rationale in support of these findings, as well as the conclusions with respect to the other factors FEA must consider and rationale in support of these conclusions, (2) the environmental impact of the issuance of a notice making effective a Construction Order, including any site specific environmental impacts, and (3) any other aspects or impacts of the proposed Construction Order believed to be relevant.

Any installation issued a Construction Order will have to comply with applicable new source performance standards prescribed by the Environmental Protection Agency under the Clean Air Act, as amended (42 U.S.C. 1857, et seq.).

Pursuant to 10 CFR 303.173(a) and (d), FEA hereby announces that a public hearing to receive oral presentation of data, views and arguments from interested persons will be held beginning at 9:00 a.m. on June 1, 2 and 3, 1977, at the Federal Building, Conference Room 11B 1421 Cherry Street, Philadelphia, Pennsylvania 19102. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request or a verbal request if confirmed in writing, for an opportunity to make an oral presentation. That request should be directed to Ed Gray, FEA Region III, Room 1001, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, (215) 597-3607. The request should be received before 4:30 p.m., Thursday, May 26, 1977. The request should describe the person's interest in the issue(s) involved; if appropriate, it should state why the person is an appropriate representative of the group or class of persons which has such an interest; it should give a concise summary of the proposed oral presentation and a phone number where the person may be contacted through May 31, 1977. Speakers should submit 10 copies of their oral presentation if possible, unless such presentation is less than five (5) pages, in which case only one copy is required, to Ed Gray, Federal Energy Administration, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, before 4:30 p.m., Monday, May 31, 1977. Speakers will be contacted by an FEA Representative before 4:30 p.m., Friday, May 27, 1977, to confirm receipt of the written request.

Detailed technical data, views and arguments should be contained in a written submission in support of the oral presentation. The oral presentation itself should be a summary of those written comments.

While FEA will endeavor to provide adequate opportunity to all who desire to speak, FEA reserves the right to limit the number of persons to be heard at the hearing, to schedule their respective presentation and to establish the procedures governing the conduct of the hearing. The length of time allocated to each presentation may be limited on the basis of the number of persons requesting to be heard. The FEA will prepare an agenda that shall provide, to the extent possible, for the presentation of all relevant data, views and arguments.

An FEA official will be designated to preside at the hearing, which will not be a judicial or evidentiary hearing. During oral presentations, only those conducting the hearing may ask questions. There will be no cross-examination. At the conclusion of all initial oral presentations, each person who has made an oral statement will be given the opportunity, if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit written questions to the presiding officer to be asked of any person making an oral presentation. The presiding officer will determine whether to ask the question, having first determined whether the question is relevant, and whether adequate time may be afforded for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and it, together with any written comments submitted in the course of the hearing, will be retained by the FEA and make available for inspection and copying at the Freedom of Information Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue, NW., Washington D.C., and the FEA Regional Office, Room 1001, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, between the hours of 8 a.m and 4:30 p.m., Monday through Friday. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit written comments consisting of data, views, or arguments with respect to the proposed Construction Orders to Executive Communications, Federal Energy Administration, Federal Building, Room 3317, Box MK, Washington, D.C. 20461.

Comments and other documents submitted to FEA Executive Communications should be identified on the outside of the envelope in which they are transmitted and on the document itself with the designation "Proposed Construction Order for the _____ Installation." Fifteen copies should be submitted.

All written comments received by 4:30 p.m., Tuesday, June 14, 1977, all oral presentations, and all other relevant information submitted to or otherwise available to FEA will be considered by FEA prior to issuance of a Construction Order.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it in accordance with that determination.

Copies of the regulations implementing Section 2 of ESECA (10 CFR Parts 303 and 307) are available from the FEA Regional Offices:

FEDERAL ENERGY ADMINISTRATION, REGIONAL OFFICES

Region, Address, and Phone

I. Robert Mitchell, Regional Administrator, 150 Causeway Street, Room 700, Boston, Massachusetts 02113—617-223-3701.

II. Alfred Kleinfeld, Regional Administrator, 26 Federal Plaza, Room 3206, New York, New York 10007—212-264-1021.

III. J. A. LaSala, Regional Administrator, 1421 Cherry Street, Rm. 1001, Philadelphia, Pennsylvania 19102—215-597-3390.

IV. Donald Allen, Regional Administrator, 1655 Peachtree Street, N.E., 8th Floor, Atlanta, Georgia 30309—404-526-2837.

V. N. Allen Andersen, Regional Administrator, Federal Office Building, Room A-333, 175 West Jackson Blvd., Chicago, Illinois 60604—312-353-0540.

VI. Delbert Fowler, Regional Administrator, P.O. Box 35228, 2626 West Mockingbird Lane, Dallas, Texas 75235—214-749-7345.

VII. Neil Adams, Regional Administrator, 1150 Grand Avenue, Kansas City, Missouri 64106—816-374-2061.

VIII. Dudley Faver, Regional Administrator, P.O. Box 26247, Belmar Branch, 1075 South Yukon Street, Lakewood, Colorado 80226—303-234-2420.

IX. William Arntz, Regional Administrator, 111 Pine Street, San Francisco, California 94111—415-556-7216.

X. Jack B. Robertson, Regional Administrator, 1992 Federal Building, 915 Second Avenue, Seattle, Washington 98174—206-442-7280.

MFBI CONSTRUCTION ORDER CANDIDATE IDENTIFICATION AND SELECTION METHODOLOGY

FEA has conducted a two part process in which it first identified the potential universe of major fuel burning installations (MFBI's) that were in the early planning process in order to determine which MFBI's might be subject to Construction Orders requiring that the MFBI be designed and constructed to be capable of using coal as its primary energy source. FEA then performed a detailed analysis of individual potential order recipients to determine whether the facts would warrant publication of a Notice of Intention (NOI) to Issue a Construction Order to any of the potential order recipients.

I. *Determination of candidate universe.*

On February 3, 1977, FEA published in the FEDERAL REGISTER (42 FR 6621) a notice requiring owners of MFBI's in the early planning process to complete Schedules A-1 and A-2 of Form FEA C-607-S-0, entitled "Major Fuel Burning Installation Early Planning Process Identification Report." (An MFBI has entered the early planning process by completing its preliminary feasibility study.) Respondents were required to complete these schedules if the MFBI's were planned with at least the minimum required design firing rate (generally 100 MM BTU per hour).

Schedule A-1 contained basic identifying data for a particular MFBI. Schedule A-2 is designed to provide FEA with information on combustor capacity, combustor use, the primary energy source, and the design and construction schedule, including the processing status of any required government permits.

After receiving the information on Schedules A-1 and A-2, FEA first determined which MFBI's were no longer in the early planning process according to § 307.2 of the FEA regulations, which states that the early planning process terminates when the MFBI "can no longer be ordered, to be designed and constructed so as to be capable of burning coal as its primary energy source without suffering significant financial or operational detriment due to the impairment of prior commitments."

In addition, FEA deferred from further consideration certain other MFBI's based on the information contained in Schedules A-1 and A-2. To date, consideration of the following types of MFBI's has been deferred:

(a) Those planning to use exclusively non-fossil fuels as their primary energy source, usually wood waste, bagasse or electricity;

(b) Those planned so as to be capable of using only coal as their primary energy source;

(c) Those planning to construct units that will be used exclusively for process uses that require utilization of natural gas or petroleum products (process use is defined in § 303.2 of the FEA regulations (10 CFR 303.2) as that fuel use for which alternate fuels are not technically feasible);

(d) Those planning exclusively to use waste gas that would not be added to the nationwide pipeline supply, or petroleum by-products that are not suitable for general commercial uses (typically these fuels are waste gases or petroleum by-products generated by refinery processes and are used in refinery steam generators).

Issuing orders to the first category of MFBI's, above, would not contribute to the saving of any oil or natural gas. Burning of non-fossil fuels, furthermore, contributes to the purpose of ESECA to aid in meeting the essential needs of the United States for fuels in the same manner as does the increased burning of coal.

In addition, FEA has exercised its administrative discretion to defer consideration of MFBI's currently planning to burn coal as their only energy source because of programmatic necessity to establish reasonable priorities. Should either units planning to use a non-fossil fuel, or units planning to burn only coal change their current plans they are to amend their response to Form FEA C-607-S-0.

FEA has applied its administrative discretion and technical expertise to determine that certain types of facilities should be covered by the "process use" exemption referred to in subparagraph (c) above. Certain of these processes reflect uses for which the burning of coal is not technically feasible. The following types of facilities have been included to date in the "process use" exemption:

(1) refinery heaters and furnaces;
(2) copper refining and melting furnaces;
(3) chemical plant process heaters and recovery furnaces;
(4) oxygen blown steelmaking vessels;
(5) primary float glass tanks; and
(6) direct fired kilns and dryer burners (producing low alkaline products).

FEA has also determined that deferring issuance of NOI's to those MFBI's that use waste gas or petroleum by-products not suitable for other commercial uses would best serve the purposes of ESECA. The uses to which these waste fuels are currently put represent efficient use of national resources. Prohibiting the use of these waste fuels would not significantly conserve national supplies of scarce fuels.

MFBI's deferred on the basis of the above criteria are notified by letter that they will not be required to submit further information at this time. All

other MFBI's in the early planning process are required by FEA to complete Schedule A–3 of Form FEA C–607–S–0. Schedule A–3 is designed to elicit detailed financial information about the MFBI owner's estimate of capital costs that would be associated with the construction of a coal capable unit. Comparative fuel costs and the net operating cost differential resulting from burning coal are also elicited by Schedule A–3. The owner's financial history and information on coal availability are also obtained.

After receipt of the information contained in Schedule A–3, FEA analyzes the capability of the owner of the MFBI to recover any increase in projected capital investment costs required as a result of a Construction Order. An owner of an MFBI is capable of recovering any increase in projected capital investment that might be required as a result of a Construction Order if the MFBI is able to make the original investment planned (prior to issuance of a Construction Order) plus any increase required as a result of a Construction Order and continue in business in at least a financially breakeven posture over the long run. FEA presumes that an MFBI owner's capability to recover capital is confirmed when that owner can both raise the necessary capital for construction of an MFBI with coal burning capability and can show an historical profit profile. Factors used in analyzing that presumption include the size of the additional capital investment necessary to comply with a Construction Order, net property and plant assets, historical construction expenditures and total equity of the owner. FEA also considers any loss of revenue resulting from a delay caused by a Construction Order. Such losses, if any, are considered in terms of increased or additional costs which an MFBI incurs for goods or services, including power, which must be purchased by the MFBI to replace those goods or services which the MFBI would have produced for itself but for the issuance of a Construction Order. Such costs will be limited to the difference between the anticipated cost of production of the goods or services at the MFBI, and the cost of purchasing replacement goods or services.

In addition, section 2(c) of ESECA indicates that FEA may not issue Construction Order NOI's to an MFBI if it determines that an adequate and reliable supply of coal is not expected to be available. To meet this statutory requirement, FEA considers the availability nationwide of total tonnages of coal, based upon the presumption that an MFBI in the early planning process can be designed and constructed to use a wide range of coal types available.

FEA also considers, prior to issuance of an MFBI Construction Order NOI, the existence and effects of any contractual commitment for the construction of the MFBI upon the owner's capability to recover any increase in capital investment required as a result of a Construction Order.

It is to be noted that much of the information used by FEA to make its practicability findings is arguably confidential under 18 U.S.C. 1905. Therefore, such information has not appeared in the Appendix to the NOI. The calculations have been explained in each case and the data are available to the representatives of the owner of the MFBI.

Any questions regarding this Notice should be directed to the FEA National Office as follows: Federal Energy Administration, Code OCU (Construction Order: ---------- Installation), Washington, D.C. 20461, 202–566–7941.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 et seq.), as amended by Pub. L. 94–163; Federal Energy Administration Act of 1974 (15 U.S.C. 761 et seq.), as amended by Pub. L. 94–385; E.O. 11790 (39 FR 23185).)

Issued in Washington, D.C., May 9, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

APPENDIX

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE A CONSTRUCTION ORDER

ESECA and the FEA regulations require FEA to make certain findings and determinations and to consider certain factors before issuing a Construction Order to a Major Fuel Burning Installation (MFBI). FEA's proposed findings, as well as its proposed conclusions with respect to the factors FEA has considered, are set out below with respect to the MFBI's named below. Supporting rationale and conclusions are also set forth.

Docket No.	Owner	Installation	Unit	Location
OCU–0540–2–1	Anheuser-Busch, Inc.	Williamsburg brewery	28–310–5	Williamsburg, Va.
OCU–0540–2–2			28–310–4	

These findings, determinations and considerations, which are now proposed by FEA, are based on the information that has been provided to and developed by FEA prior to the issuance of this Notice of Intention (NOI) to issue a Construction Order.

Anheuser-Busch, Incorporated shall be referred to as the "owner". Williamsburg Brewery Units 28–310–5 and 28–310–4 shall be referred to as the "MFBI's".

I. *Proposed findings.*—A. *The MFBI's are in the early planning process.* Based on an analysis of the information submitted to FEA by the owner on Form FEA C–607–S–0 and information provided by the owner in response to subsequent inquiry to assure the continued applicability and currency of such information, including, as appropriate, an on-site inspection visit, FEA proposes to find that the MFBI's are in the early planning process. This proposed finding is based on the facts, assumptions and reasoning referenced below:

1. Schedule A–2 of Form FEA C–607–S–0 submitted by the owner shows that the preliminary feasibility study was completed.

2. Information supplied by the owner or otherwise acquired by FEA indicates that the early planning process for these MFBI's has not terminated.

3. Schedule A–2 of Form FEA C–607–S–0 submitted by the owner shows that the MFBI's meet the minimum design firing rate requirement.

B. *Within the terms of ESECA, FEA has been unable to determine that an adequate and reliable supply of coal is not expected to be available.* This proposed determination is based upon the facts, interpretations and assumptions stated below:

1. *Coal availability.*—(a) *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the future. United States Department of the Interior, Bureau of Mines (BOM) data show a demonstrated coal reserve base of over 400 billion tons, over half of which is currently technically and economically recoverable (Demonstrated Coal Reserve Base of the United States, by Sulfur Category, on January 1, 1974, Bureau of Mines (May 1975) (hereafter "BOM Survey")). Within these recoverable reserves approximately 200 billion tons contain 1 percent or less sulfur by weight. To determine when certain quantities of these reserves are expected to be available, FEA has examined several studies referenced herein, which together provide the best current evidence as to coal availability.

(b) *National coal production and demand.* The comparison, stated below, of estimated national coal production, national coal demand, and the total tonnage of uncommitted planned coal production (derived from responses to a survey of coal producing companies) shows that there should be sufficient production of coal to meet the total national demand through 1980. Beyond 1980, plans for new production are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future; however, the projected total planned national coal production for 1985 already meets over 99% of the total U.S. demand expected in 1985. With time, more potential mine developments will become firm plans, thus increasing the planned production.

(1) *National Coal production.* It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

Year:	*Production potential (million tons)*
1977	732.3
1978	791.6
1979	851.4
1980	911.7
1981	960.0
1982	994.3
1983	1,017.4
1984	1,028.7
1985	1,029.6

The figures shown above are derived from FEA's Coal Mine Expansion Study (May 1976). This study demonstrates that most coal producers did not have firm or accurate plans for new capacity additions beyond 1980. The 1985 projection, therefore, tends to underestimate actual production potential.

An FEA study, Coal Availability Report, April 1977, (hereafter "Availability Report"), indicates current plans for nationwide production of uncommitted coal as follows:

Year:	*Production (million tons)*
1978	124.3
1979	243.1
1980	293.3
1981	350.0
1982	369.0
1983	396.2
1984	475.5
1985	544.9

(2) *National demand exclusive of ESECA prohibition order demand.* The estimated national demand, excluding any increased demand resulting from FEA action under the authority of Section 2(a) of ESECA, is as follows (FEA 1976 National Energy Outlook):

Year:	Demand (million tons)
1978	730
1979	764
1980	799
1981	842
1982	887
1983	935
1984	985
1985	1,040

(3) *National ESECA prohibition order demand.* The estimated potential demand for coal resulting from all Notices of Intention to issue Prohibition Orders to date and from all outstanding Prohibition Orders issued to date under Section 2(a) of ESECA is no more than the following ("Availability Report"):

Year:	Demand (million tons)
1978	11.0
1979	22.4
1980	32.5
1981	35.8
1982	57.4
1983	59.8
1984	59.8

(c) *State or local laws.* FEA has found no state or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none have been brought to FEA's attention.

(d) *Conclusion.* Potential coal demand from these MFBI's and from all other MFBI's which are currently under consideration to receive Notices of Intention to issue Construction Orders under authority of Section 2(c) of ESECA is not included in the total national demand stated in paragraph 1.(b)(2), above. Coal demand from such MFBI's is also not calculated in currently projected ESECA generated demand since it is infeasible to anticipate specific quality characteristics for the coal that will be required by these MFBI's so far in advance of their actual construction.

As noted previously, plans for new coal production beyond 1980 are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future. The projection for national coal production potential in 1985 cited in paragraph 2.(a), above, tends to underestimate actual production potential.

FEA has considered these facts and the fact that the potential annual demand for coal will increase once these MFBI's and others become operational. FEA expects, however, (based on an analysis of the "BOM Survey," the Coal Mine Expansion Study, the FEA 1976 National Energy Outlook, and the "Availability Report," cited above) that national coal production potential will substantially exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential additional demand for coal if all MFBI's currently under consideration were to receive Construction Orders under section 2(c) of ESECA. Within the terms of ESECA, FEA has been unable to determine that coal is not expected to be available for these MFBI's once they become operational. The best available evidence suggests that coal production potential will, in fact, considerably exceed all demand for the years pertinent to this proposed order.

The coal for these MFBI's will probably be bought from producers according to regional supply/demand relationships related to the MFBI's location. FEA observes, however, that the MFBI's could purchase coal in other markets as such production becomes available. (The Feasibility of Considering Expanded Use of Western Coal by Midwestern and Eastern Utilities in the Period 1978 and Beyond, School of Engineering, University of Pennsylvania, November 7, 1975.)

(e) *Coal transportation.* FEA has considered the availability of national coal transportation facilities. Generally, FEA considers construction lead times pertinent to MFBI's in the early-planning process to be sufficient to allow owners to secure appropriate coal transportation and coal transportation facilities prior to becoming operational.

II. *Factors which ESECA requires FEA to consider.*—A. *The existence and effects of any contractual commitment for the construction of the MFBI's.* FEA has considered the existence and effects of any contractual commitment for the construction of the MFBI's which the owner has reported to FEA in a Schedule of Plan Change Costs attachment to a Form FEA C-607-S-0 Schedule A-3, or otherwise. FEA has considered the additional costs which would be incurred in connection with existing contractual commitments should FEA require that the MFBI's be designed and constructed to be capable of using coal as their primary energy source. Accordingly, FEA has included these costs in its consideration of the capability of the owner to recover any increase in capital investment required as a result of a Construction Order.

B. *The capability of the owner to recover any increase in projected capital investment required as a result of a construction order.* FEA has considered, in the manner described below, the capability of the owner to raise and to recover the increased capital investment expected to result from the issuance of a Construction Order.

1. *Increased capital investment required as a result of a construction order.* FEA has evaluated the additional capital investment costs required in order to design and construct the MFBI's to be capable of burning coal as their primary energy source. This calculation is based on existing FEA information and analysis, as well as information filed with FEA by the owner concerning the cost of equipment and facilities that would have to be acquired. Approximate costs to comply with applicable environmental protection requirements have also been considered, including the cost of compliance with the air pollution control requirements of the Clean Air Act.

2. *Capability of the owner to raise the increased capital investment.* This analysis is based upon an evaluation of the owner's current financial position as reported in the Dun and Bradstreet Reference Book, (March 1977). Where necessary, FEA has performed an independent analysis of the owner's financial capability. In those cases in which an independent analysis of the owner's ability to recover the additional capital investment we performed, FEA related the additional capital investment costs discussed in paragraph B.1., above, and the plan change costs discussed in paragraph II. A., above, to the owner's net property and plant assets, the owner's reported recent construction expenditures and the owner's equity.

In considering the owner's ability to recover the increased capital investment costs, FEA has compared these increased costs, the demonstrated ability of the owner to raise the additional capital, any loss of revenue resulting from a delay, if any, in the commencement of operations of the MFBI's resulting from a Construction Order, the owner's historical profit profile, and a presumed useful life of the MFBI's after construction of 40 years.

In light of such considerations, FEA presumes that the owner's capability to recover any increase in capital is confirmed since the owner can both raise the necessary additional capital for construction with coal burning capability and has historically shown a profit profile.

APPENDIX

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE A CONSTRUCTION ORDER

ESECA and the FEA regulations require FEA to make certain findings and determinations and to consider certain factors before issuing a Construction Order to a Major Fuel Burning Installation (MFBI). FEA's proposed findings, as well as its proposed conclusions with respect to the factors FEA has considered, are set out below with respect to the MFBI's named below. Supporting rationale and conclusions are also set forth.

Docket No.	Owner	Installation	Unit	Location
OCU-0900-1-1	Supervisory committee of Bellefield boiler plant.	Bellefield boiler plant	Replacement 3.	Pittsburgh, Pa.

These findings, determinations and considerations, which are now proposed by FEA, are based on the information that has been provided to and developed by FEA prior to the issuance of this Notice of Intention (NOI) to issue a Construction Order.

Supervisory Committee of Bellefield Boiler Plant shall be referred to as the "owner". Bellefield Boiler Plant Replacement 3 shall be referred to as the "MFBI".

I. *Proposed findings.*

A. *The MFBI is in the early planning process.* Based on an analysis of the information submitted to FEA by the owner on Form FEA C-607-S-0 and information provided by the owner in response to subsequent inquiry to assure the continued applicability and currency of such information, including, as appropriate, an on-site inspection visit, FEA proposes to find that the MFBI is in the early planning process. This proposed finding is based on the facts, assumptions and reasoning referenced below:

1. Schedule A-2 of Form FEA C-607-S-0 submitted by the owner shows that the preliminary feasibility study was completed.

2. Information supplied by the owner or otherwise acquired by FEA indicates that the early planning process for this MFBI has not terminated.

3. Schedule A-2 of Form FEA C-607-S-0 submitted by the owner shows that the MFBI meets the minimum design firing rate requirement.

B. *Within the terms of ESECA, FEA has been unable to determine that an adequate and reliable supply of coal is not expected to be available.* This proposed determination is based upon the facts, interpretations and assumptions stated below:

1. *Coal availability.*—(a) *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the future. United States Department of the Interior, Bureau of Mines (BOM) data show a demonstrated coal reserve base of over 400 billion tons, over half of which is currently technically and economically recoverable (Demonstrated Coal Reserve Base of the United States, by Sulfur Category, on January 1, 1974, Bureau of Mines (May 1975) [hereafter "BOM Survey"]). Within these recoverable reserves approximately 200 billion tons contain 1 percent or less sulfur by weight. To determine when certain quantities of these reserves are expected to be

available, FEA has examined several studies referenced herein, which together provide the best current evidence as to coal availability.

(b) *National coal production and demand.* The comparison, stated below, of estimated national coal production, national coal demand, and the total tonnage of uncommitted planned coal production (derived from responses to a survey of coal producing companies) shows that there should be sufficient production of coal to meet the total national demand through 1980. Beyond 1980, plans for new production are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future; however, the projected total planned national coal production for 1985 already meets over 99 percent of the total U.S. demand expected in 1985. With time, more potential mine developments will become firm plans, thus increasing the planned production.

(1) *National coal production.* It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

Year:	*Production potential (million tons)*
1977	732.3
1978	791.6
1979	851.4
1980	911.7
1981	960.0
1982	994.3
1983	1,017.4
1984	1,028.7
1985	1,029.6

The figures shown above are derived from FEA's Coal Mine Expansion Study (May 1976). This study demonstrates that most coal producers did not have firm or accurate plans for new capacity additions beyond 1980. The 1985 projection, therefore, tends to underestimate actual production potential.

An FEA study, Coal Availability Report, April 1977 (hereafter "Availability Report"), indicates current plans for nationwide production of uncommitted coal as follows:

Year:	*Production (million tons)*
1978	124.3
1979	243.1
1980	293.3
1981	350.0
1982	369.9
1983	396.2
1984	475.5
1985	544.9

(2) *National demand exclusive of ESECA prohibition order demand.* The estimated national demand, excluding any increased demand resulting from FEA action under the authority of Section 2(a) of ESECA, is as follows (FEA 1976 National Energy Outlook):

Year:	*Demand (million tons)*
1978	730
1979	764
1980	799
1981	842
1982	887
1983	935
1984	985
1985	1,040

(3) *National ESECA prohibition order demand.* The estimated potential demand for coal resulting from all Notices of Intention to issue Prohibition Orders to date and from all outstanding Prohibition Orders issued to date under Section 2(a) of ESECA is no more than the following ("Availability Report"):

Year:	*Demand (million tons)*
1978	11.0
1979	22.4
1980	32.5
1981	35.8
1982	57.4
1983	59.8
1984	59.8

(c) *State or local laws.* FEA has found no state or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none have been brought to FEA's attention.

(d) *Conclusion.* Potential coal demand from this MFBI and from all other MFBI's which are currently under consideration to receive Notices of Intention to issue Construction Orders under authority of section 2(c) of ESECA is not included in the total national demand stated in paragraph 1.(b)(2), above. Coal demand from such MFBI's is also not calculated in currently projected ESECA generated demand since it is infeasible to anticipate specific quality characteristics for the coal that will be required by these MFBI's so far in advance of their actual construction.

As noted previously, plans for new coal production beyond 1980 are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future. The projection for national coal production potential in 1985 cited in paragraph 2.(a), above, tends to underestimate actual production potential.

FEA has considered these facts and the fact that the potential annual demand for coal will increase once this MFBI and others become operational.

FEA expects, however, (based on an analysis of the "BOM Survey", the Coal Mine Expansion Study, the FEA 1976 National Energy Outlook, and the "Availability Report", cited above) that national coal production potential will substantially exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential additional demand for coal if all MFBI's currently under consideration were to receive Construction Orders under Section 2(c) of ESECA. Within the terms of ESECA, FEA has been unable to determine that coal is not expected to be available for this MFBI once it becomes operational. The best available evidence suggests that coal production potential will, in fact, considerably exceed all demand for the years pertinent to this proposed order.

The coal for this MFBI will probably be bought from producers according to regional supply/demand relationships related to the MFBI's location. FEA observes, however, that the MFBI could purchase coal in other markets as such production becomes available. (The Feasibility of Considering Expanded Use of Western Coal by Midwestern and Eastern Utilities in the Period 1978 and Beyond, School of Engineering, University of Pennsylvania, November 7, 1975).

(e) *Coal transportation.* FEA has considered the availability of national coal transportation facilities. Generally, FEA considers construction lead times pertinent to MFBI's in the early-planning process to be sufficient to allow owners to secure appropriate coal transportation and coal transportation facilities prior to becoming operational.

II. *Factors which ESECA requires FEA to consider.* A. *The existence and effects of any contractual commitment for the construction of the MFBI.* FEA has considered the existence and effects of any contractual commitment for the construction of the MFBI which the owner has reported to FEA in a Schedule of Plan Change Costs attachment to a Form FEA C-607-S-0 Schedule A-3, or otherwise. FEA has considered the additional costs which would be incurred in connection with existing contractual commitments should FEA require that the MFBI be designed and constructed to be capable of using coal as its primary energy source. Accordingly, FEA has included these costs in its consideration of the capability of the owner to recover any increase in capital investment required as a result of a Construction Order.

B. *The capability of the owner to recover any increase in projected capital investment required as a result of a construction order.* In the response to Form FEA C-607-S-0, the owner indicated that the MFBI would be designed and constructed to be capable of using coal as its primary energy source. FEA concludes, therefore, that the FEA requirement that the MFBI be designed and constructed to be capable of burning coal as its primary energy source will not require any increase in projected capital investment, nor result in a delay in the commencement of operations of the MFBI. FEA further concludes that since no increase in projected capital investment is required, and no delay in the commencement of operations will result, FEA is not required to consider the capability of the owner to recover any increase in projected capital investment.

APPENDIX

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE A CONSTRUCTION ORDER

ESECA and the FEA regulations require FEA to make certain findings and determinations and to consider certain factors before issuing a Construction Order to a Major Fuel Burning Installation (MFBI). FEA's proposed findings, as well as its proposed conclusions with respect to the factors FEA has considered, are set out below with respect to the MFBI named below. Supporting rationale and conclusions are also set forth.

Docket No.	Owner	Installation	Unit	Location
OCU-1050-1-1	Boeing Co.	Boeing Vertol	Unassigned	Ridley Township, Pa.

These findings, determinations and considerations, which are now proposed by FEA, are based on the information that has been provided to and developed by FEA prior to the issuance of this Notice of Intention (NOI) to issue a Construction Order.

Boeing Company shall be referred to as the "owner". Boeing Vertol Unassigned Unit shall be referred as to the "MFBI".

I. *Proposed findings.*—A. *The MFBI is in the early planning process.* Based on an analysis of the information submitted to FEA by the owner on Form FEA C-607-S-0 and information provided by the owner in response to subsequent inquiry to assure the continued applicability and currency of such information, including, as appropriate, an on-site inspection visit, FEA proposes to

find that the MFBI is in the early planning process. This proposed finding is based on the facts, assumptions and reasoning referenced below:

1. Schedule A-2 of Form FEA C-607-S-0 submitted by the owner shows that the preliminary feasibility study was completed.

2. Information supplied by the owner or otherwise acquired by FEA indicates that the early planning process for this MFBI has not terminated.

3. Schedule A-2 of From FEA C-607-S-0 submitted by the owner shows that the MFBI meets the minimum design firing rate requirement.

B. *Within the terms of ESECA, FEA has been unable to determine that an adequate and reliable supply of coal is not expected to be available.* This proposed determination is based upon the facts, interpretations and assumptions stated below:

1. *Coal availability.*—(a) *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the future. United States Department of the Interior, Bureau of Mines (BOM) data show a demonstrated coal reserve base of over 400 billion tons, over half of which is currently technically and economically recoverable (Demonstrated Coal Reserve Base of the United States, by Sulfur Category, on January 1, 1974, Bureau of Mines (May 1975) (hereafter "BOM Survey")). Within these recoverable reserves approximately 200 billion tons contain 1% or less sulfur by weight. To determine when certain quantities of these reserves are expected to be available, FEA has examined several studies referenced herein, which together provide the best current evidence as to coal availability.

(b) *National coal production and demand.* The comparison, stated below, of estimated national coal production, national coal demand, and the total tonnage of uncommitted planned coal production (derived from responses to a survey of coal producing companies) shows that there should be sufficient production of coal to meet the total national demand through 1980. Beyond 1980, plans for new production are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future; however, the projected total planned national coal production for 1985 already meets over 99% of the total U.S. demand expected in 1985. With time, more potential mine developments will become firm plans, thus increasing the planned production.

(1) *National coal production.* It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

Year:	*Production potential (million tons)*
1977	732.3
1978	791.6
1979	851.4
1980	911.7
1981	960.0
1982	994.3
1983	1,017.4
1984	1,028.7
1985	1,029.6

The figures shown above are derived from FEA's Coal Mine Expansion Study (May 1976). This study demonstrates that most coal producers did not have firm or accurate plans for new capacity additions beyond 1980. The 1985 projection, therefore, tends to underestimate actual production potential.

An FEA study, Coal Availability Report, April 1977, (hereafter "Availability Report"), indicates current plans for nationwide production of uncommitted coal as follows:

Year:	*Production (million tons)*
1978	124.3
1979	243.1
1980	293.3
1981	350.0
1982	369.9
1983	396.2
1984	475.5
1985	544.9

(2) *National demand exclusive of ESECA prohibition order demand.* The estimated national demand, excluding any increased demand resulting from FEA action under the authority of section 2(a) of ESECA, is as follows (FEA 1976 National Energy Outlook):

Year:	*Demand (million tons)*
1978	730
1979	764
1980	799
1981	842
1982	887
1983	935
1984	985
1985	1,040

(3) *National ESECA prohibition order demand.* The estimated potential demand for coal resulting from all Notices of Intention to issue Prohibition Orders to date and from all outstanding Prohibition Orders issued to date under Section 2(a) of ESECA is no more than the following ("Availability Report"):

Year:	*Demand (million tons)*
1978	11.0
1979	22.4
1980	32.5
1981	35.8
1982	57.4
1983	59.8
1984	59.8

(c) *State or local laws.* FEA has found no state or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none have been brought to FEA's attention.

(d) *Conclusion.* Potential coal demand from this MFBI and from all other MFBI's which are currently under consideration to receive Notices of Intention to issue Construction Orders under authority of section 2(c) of ESECA is not included in the total national demand stated in paragraph 1.(b)(2), above. Coal demand from such MFBI's is also not calculated in currently projected ESECA generated demand since it is infeasible to anticipate specific quality characteristics for the coal that will be required by these MFBI's so far in advance of their actual construction.

As noted previously, plans for new coal production beyond 1980 are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future. The projection for national coal production potential in 1985 cited in paragraph 2.(a), above, tends to underestimate actual production potential.

FEA has considered these facts and the fact that the potential annual demand for coal will increase once this MFBI and others become operational. FEA expects, however, (based on an analysis of the "BOM Survey", the Coal Mine Expansion Study, the FEA 1976 National Energy Outlook, and the "Availability Report", cited above) that national coal production potential will substantially exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential additional demand for coal if all MFBI's currently under consideration were to receive Construction Orders under Section 2(c) of ESECA. Within the terms of ESECA, FEA has been unable to determine that coal is not expected to be available for this MFBI once it becomes operational. The best available evidence suggests that coal production potential will, in fact, considerably exceed all demand for the years pertinent to this proposed order.

The coal for this MFBI will probably be bought from producers according to regional supply/demand relationships related to the MFBI's location. FEA observes, however, that the MFBI could purchase coal in other markets as such production becomes available. (The Feasibility of Considering Expanded Use of Western Coal by Midwestern and Eastern Utilities in the Period 1978 and Beyond, School of Engineering, University of Pennsylvania, November 7, 1975.)

(e) *Coal transportation.* FEA has considered the availability of national coal transportation facilities. Generally FEA considers construction lead times pertinent to MFBI's in the early-planning process to be sufficient to allow owners to secure appropriate coal transportation and coal transportation facilities prior to becoming operational.

II. *Factors which ESECA requires FEA to consider.*—A. *The existence and effects of any contractual commitment for the construction of the MFBI.* FEA has considered the existence and effects of any contractual commitment for the construction of the MFBI which the owner has reported to FEA in a Schedule of Plan Change Costs attachment to a Form FEA C-607-S-0 Schedule A-3, or otherwise. FEA has considered the additional costs which would be incurred in connection with existing contractual commitments should FEA require that the MFBI be designed and constructed to be capable of using coal as its primary energy source. Accordingly, FEA has included these costs in its consideration of the capability of the owner to recover any increase in capital investment required as a result of a Construction Order.

B. *The capability of the owner to recover any increase in projected capital investment required as a result of a construction order.* FEA has considered, in the manner described below, the capability of the owner to raise and to recover the increased capital investment expected to result from the issuance of a Construction Order.

1. *Increased capital investment required as a result of a construction order.* FEA has evaluated the additional capital investment costs required in order to design and construct the MFBI to be capable of burning coal as its primary energy source. This calculation is based on existing FEA information and analysis, as well as information filed with FEA by the owner concerning the cost of equipment and facilities that would have to be acquired. Approximate costs to comply with applicable environmental protection requirements have also been considered, including the cost of compliance with the air pollution control requirements of the Clean Air Act.

2. *Capability of the owner to raise the increased capital investment.* This analysis is based upon an evaluation of the owner's current financial position as reported in the Dun and Bradstreet Reference Book (March 1977). Where necessary, FEA has performed an independent analysis of the owner's financial capability. In those cases in which an independent analysis of the owner's ability to recover the additional capital investment was performed, FEA related the additional capital investment costs discussed in paragraph B.1., above, and the plan change costs discussed in paragraph II.A., above, to the owner's net property and plant assets,

the owner's reported recent construction expenditures and the owner's equity.

In considering the owner's ability to recover the increased capital investment costs, FEA has compared these increased costs, the demonstrated ability of the owner to raise the additional capital, any loss of revenue resulting from a delay, if any, in the commencement of operations of the MFBI resulting from a Construction Order, the owner's historical profit profile, and a presumed useful life of the MFBI after construction of 40 years.

In light of such considerations, FEA presumes that the owner's capability to recover any increase in capital is confirmed since the owner can both raise the necessary additional capital for construction with coal burning capability and has historically shown a profit profile.

[FR Doc.77-13700 Filed 5-16-77;8:45 am]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Notice of Intention To Issue Construction Orders to Certain Major Fuel Burning Installations

The Federal Energy Administration (FEA) hereby gives notice of its intention to issue Construction Orders pursuant to section 2(c) of the Energy Supply and Environmental Coordination Act of 1974, as amended (ESECA), and Title 10, Code of Federal Regulations (10 CFR), Parts 303 and 307 to the following installations in the early planning process:

Docket No.	Owner	Installation	Number of units	Location
OCU-6650-3-1	Shell Oil Co.	Petrolia plant	2	Fellows, Calif.
OCU-6650-3-2				
OCU-6650-1-1	do	Pricewell plant	2	Bakersfield, Calif.
OCU-6650-1-2				
OCU-6650-2-1	do	Marco plant	2	Do.
OCU-6650-2-2				
OCU-8830-2-1	Standard Oil Co. of California/ Chevron, U.S.A., Inc.	NCD Cymric area, sec. 97.	2	Oildale, Calif.
OCU-8830-2-2				
OCU-8830-1-1	do	NCD Bakersfield area, sec. 27, Kern front.	2	Bakersfield, Calif.
OCU-8830-1-2				

FEA hereby also gives notice of the opportunity for written and oral presentation of data, views and arguments by interested persons regarding these proposed Construction Orders.

The proposed orders would require the above-named installations in the early planning process to be designed and constructed to be capable of using coal as their primary energy source.

Prior to the issuance of a Construction Order to an installation, section (c) of ESECA and 10 CFR 303.46(b), 307.3(b), and 307.3(c) require that FEA find that the installation is in the early planning process. A Construction Order may not be issued if FEA finds that an adequate and reliable supply of coal and coal transportation facilities are not reasonably expected to be available. FEA's proposed findings, as well as its proposed conclusions and rationale with respect to these findings, for the installation are set out in Section I of the Appendix to this notice. These findings, conclusions and rationale may be amended as a result of comments received by FEA pursuant to this notice and other information available to FEA. The findings, conclusions and rationale will be included, with any amendments, in the Construction Order if it is issued.

In addition, section 2(c) of ESECA and 10 CFR 303.46(b) and 307.3(d) require that FEA consider certain other factors prior to issuance of a Construction Order. FEA's initial conclusions and a brief statement of the rationale for each, with respect to such considerations, are set out in Section II of the Appendix to this notice. The conclusions and rationale may be amended as a result of comments received by FEA pursuant to this notice and other information available to FEA. The conclusions and rationale will be included, with any amendments, in the Construction Order if it is issued.

Upon completion of the proceeding described in this notice, FEA may determine to issue Construction Orders to some or all of the above-named installations. The Construction Orders will not become effective, however, until FEA has considered the environmental impact of each order, pursuant to 10 CFR 208.3(a)(4) and 307.7, and has served the affected installation with a Notice of Effectiveness, as provided in 10 CFR 303.10(b), 303.47(b), and 307.5. 10 CFR 307.7(c) requires that, prior to the issuance of a Notice of Effectiveness to an installation, FEA shall perform an analysis of the environmental impact of the issuance of such Notice of Effectiveness. That analysis shall result in either 1) a declaration that the Construction Order will not, if made effective by a Notice of Effectiveness, be likely to have a significant impact on the quality of the human environment; or, 2) the preparation by FEA of an environmental impact statement covering the significant site-specific impacts that are likely to result from the Construction Order and that have not been adequately addressed in the Final Programmatic Environmental Impact Statement or in other official documents made publicly available. If FEA prepares an environmental impact statement covering significant site-specific impacts from the Construction Order, the statement shall be prepared and published for comment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 prior to issuance of a Notice of Effectiveness. Interested persons may request a public hearing pursuant to 10 CFR 303.173 to comment on the contents of a draft environmental impact statement.

Public comment on the proposal to issue a Construction Order to the installations listed above is invited in the form of written and oral presentation of data, views and arguments.

Comments should address: (1) The adequacy and validity of each of the proposed findings and the conclusions and rationale in support of these findings, as well as the conclusions with respect to the other factors FEA must consider and rationale in support of these conclusions, (2) the environmental impact of the issuance of a notice making effective a Construction Order, including any site-specific environmental impacts, and (3) any other aspects or impacts of the proposed Construction Order believed to be relevant.

Any installation issued a Construction Order will have to comply with applicable new source performance standards prescribed by the Environmental Protection Agency under the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

Pursuant to 10 CFR 303.173 (a) and (d), FEA hereby announces that a public hearing to receive oral presentation of data, views and arguments from interested persons will be held beginning at 9:00 a.m. on May 27, 1977, at the Holiday Inn, 1500 Van Ness, San Francisco, California 94109. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request or a verbal request if confirmed in writing, for an opportunity to make an oral presentation. That request should be directed to Eugene Stanley, FEA Region IX, 111 Pine Street, San Francisco, California 94109. The request should be received before 4:30 p.m., Friday, May 20, 1977. The request should describe the person's interest in the issue(s) involved; if appropriate, it should state why the person is an appropriate representative of the group or class of persons which has such an interest; it should give a concise summary of the proposed oral presentation and a phone number where the person may be contacted through May 26, 1977. Speakers should submit 10 copies of their oral presentation if possible, unless such presentation is less than five (5) pages, in which case only one copy is required, to William Arntz, Regional Administrator, Federal Energy Administration, 111 Pine Street, San Francisco, California 94111, before 4:30 p.m., Thursday, May 26, 1977. Speakers will be contacted by an FEA Representative before 4:30 p.m., Tuesday, May 24, 1977, to confirm receipt of the written request.

Detailed technical data, views and arguments should be contained in a written submission in support of the oral presentation. The oral presentation itself should be a summary of those written comments.

While FEA will endeavor to provide adequate opportunity to all who desire to speak, FEA reserves the right to limit the number of persons to be heard at the hearing, to schedule their respective presentation and to establish the procedures governing the conduct of the hearing. The length of time allocated to each presentation may be limited on the basis of the number of persons requesting to be heard. The FEA will prepare an

agenda that shall provide, to the extent possible, for the presentation of all relevant data, views, and arguments.

An FEA official will be designated to preside at the hearing, which will not be a judicial or evidentary hearing. During oral presentations, only those conducting the hearing may ask questions. There will be no cross-examination. At the conclusion of all initial oral presentations, each person who has made an oral statement will be given the opportunity, if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit written questions to the presiding officer to be asked of any person making an oral presentation. The presiding officer will determine whether to ask the question, having first determined whether the question is relevant, and whether adequate time may be afforded for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and it, together with any written comments submitted in the course of the hearing, will be retained by the FEA and made available for inspection and copying at the Freedom of Information Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., and the FEA Regional Office, 111 Pine Street, San Francisco, California 94111, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit written comments consisting of data, views, or arguments with respect to the proposed Construction Orders to Executive Communications, Federal Energy Administration, Federal Building, Room 3317, Box MK, Washington, D.C. 20461.

Comments and other documents submitted to FEA Executive Communications should be identified on the outside of the envelope in which they are transmitted and on the document itself with the designation "Proposed Construction Order for the _____ Installation." Fifteen copies should be submitted.

All written comments received by 4:30 p.m., Tuesday, June 14, 1977, all oral presentations, and all other relevant information submitted to or otherwise available to FEA will be considered by FEA prior to issuance of a Construction Order.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it in accordance with that determination.

Copies of the regulations implementing Section 2 of ESECA (10 CFR Parts 303 and 307) are available from the FEA Regional Offices:

FEDERAL ENERGY ADMINISTRATION, REGIONAL OFFICES

Region, address, and phone

I. Robert Mitchell, Regional Administrator, 150 Causeway St., room 700, Boston, Mass. 02113—617-223-3701.

II. Alfred Kleinfeld, Regional Administrator, 26 Federal Plaza, room 3206, New York, N.Y. 10007—212-264-1021.

III. J. A. LaSala, Regional Administrator, 1421 Cherry St., room 1001, Philadelphia, Pa. 19102—215-597-3390.

IV. Donald Allen, Regional Administrator, 1655 Peachtree St., NE., 8th floor, Atlanta, Ga. 30309—404-526-2837.

V. N. Allen Andersen, Regional Administrator, Federal Office Bldg., room A-333, 175 West Jackson Blvd., Chicago, Ill. 60604—312-353-0540.

VI. Delbert Fowler, Regional Administrator, P.O. Box 35228, 2626 West Mockingbird Lane, Dallas, Tex. 75235—214-749-7345.

VII. Nell Adams, Regional Administrator, 1150 Grand Ave., Kansas City, Mo. 64106—816-374-2061.

VIII. Dudley Faver, Regional Administrator, P.O. Box 26247, Belmar Branch, 1075 South Yukon St., Lakewood, Colo. 80226—303-234-2420.

IX. William Arntz, Regional Administrator, 111 Pine St., San Francisco, Calif. 94111—415-556-7216.

X. Jack B. Robertson, Regional Administrator, 1992 Federal Bldg., 915 2d Ave., Seattle, Wash. 98174—206-442-7280.

MFBI CONSTRUCTION ORDER CANDIDATE IDENTIFICATION AND SELECTION METHODOLOGY

FEA has conducted a two part process in which it first identified the potential universe of major fuel burning installations (MFBI's) that were in the early planning process in order to determine which MFBI's might be subject to Construction Orders requiring that the MFBI be designed and constructed to be capable of using coal as its primary energy source. FEA then performed a detailed analysis of individual potential order recipients to determine whether the facts would warrant publication of a Notice of Intention (NOI) to Issue a Construction Order to any of the potential order recipients.

I. *Determination of candidate universe.*—On February 3, 1977, FEA published in the FEDERAL REGISTER (42 FR 6621) a notice requiring owners of MFBI's in the early planning process to complete Schedules A-1 and A-2 of Form FEA C-607-S-0, entitled "Major Fuel Burning Installation Early Planning Process Identification Report." (An MFBI has entered the early planning process by completing its preliminary feasibility study.) Respondents were required to complete these schedules if the MFBI's were planned with at least the minimum required design firing rate (generally 100 MM Btu per hour).

Schedule A-1 contained basic identifying data for a particular MFBI. Schedule A-2 is designed to provide FEA with information on combustor capacity, combustor use, the primary energy source, and the design and construction schedule, including the processing status of any required government permits.

After receiving the information on Schedules A-1 and A-2, FEA first determined which MFBI's were no longer in the early planning process according to § 307.2 of the FEA regulations, which states that the early planning process terminates when the MFBI "can no longer be ordered, to be designed and constructed so as to be capable of burning coal as its primary energy source without suffering significant financial or operational detriment due to the impairment of prior commitments."

In addition, FEA deferred from further consideration certain other MFBI's based on the information contained in Schedules A-1 and A-2. To date, consideration of the following types of MFBI's has been deferred:

(a) Those planning to use exclusively non-fossil fuels as their primary energy source, usually wood waste, bagasse or electricity;

(b) Those planned so as to be capable of using only coal as their primary energy source;

(c) Those planning to construct units that will be used exclusively for process uses that require utilization of natural gas or petroleum products (process use is defined in § 303.2 of the FEA regulations (10 CFR § 303.2) as that fuel use for which alternate fuels are not technically feasible);

(d) Those planning exclusively to use waste gas that would not be added to the nationwide pipeline supply, or petroleum by-products that are not suitable for general commercial uses (typically these fuels are waste gases or petroleum by-products generated by refinery processes and are used in refinery steam generators).

Issuing orders to the first category of MFBI's, above, would not contribute to the saving of any oil or natural gas. Burning on non-fossil fuels, furthermore, contributes to the purpose of ESECA to aid in meeting the essential needs of the United States for fuels in the same manner as does the increased burning of coal.

In addition, FEA has exercised its administrative discretion to defer consideration of MFBI's currently planning to burn coal as their only energy source because of programmatic necessity to establish reasonable priorities. Should either units planning to use a non-fossil fuel, or units planning to burn only coal change their current plans they are to amend their response to Form FEA C-607-S-0.

FEA has applied its administrative discretion and technical expertise to determine that certain types of facilities should be covered by the "process use" exemption referred to in subparagraph (c) above. Certain of these processes reflect uses for which the burning of coal is not technically feasible. The following types of facilities have been included to date in the "process use" exemption:

(1) Refinery heaters and furnaces;

(2) Copper refining and melting furnaces;

(3) Chemical plant process heaters and recovery furnaces;

(4) Oxygen blown steelmaking vessels;

(5) Primary float glass tanks;

(6) Direct fired kilns and dryer burners (producing low alkaline products).

FEA has also determined that deferring issuance of NOI's to those

MFBI's that use waste gas or petroleum by-products not suitable for other commercial uses would best serve the purposes of ESECA. The uses to which these waste fuels are currently put represent efficient use of national resources. Prohibiting the use of these waste fuels would not significantly conserve national supplies of scarce fuels.

MFBI's deferred on the basis of the above criteria are notified by letter that they will not be required to submit further information at this time. All other MFBI's in the early planning process are required by FEA to complete Schedule A–3 of Form FEA C–607–S–O. Schedule A–3 is designed to elicit detailed financial information about the MFBI owner's estimate of capital costs that would be associated with the construction of a coal capable unit. Comparative fuel costs and the net operating cost differential resulting from burning coal are also elicited by Schedule A–3. The owner's financial history and information on coal availability are also obtained.

After receipt of the information contained in Schedule A–3, FEA analyzes the capability of the owner of the MFBI to recover any increase in projected capital investment costs required as a result of a Construction Order. An owner of an MFBI is capable of recovering any increase in projected capital investment that might be required as a result of a Construction Order if the MFBI is able to make the original investment planned (prior to issuance of a Construction Order) plus any increase required as a result of a Construction Order and continue in business in at least a financially breakeven posture over the long run. FEA presumes that an MFBI owner's capability to recover capital is confirmed when that owner can both raise the necessary capital for construction of an MFBI with coal burning capability and can show a historical profit profile. Factors used in analyzing that presumption include the size of the additional capital investment necessary to comply with a Construction Order, net property and plant assets, historical construction expenditures and total equity of the owner. FEA also considers any loss of revenue resulting from a delay caused by a Construction Order. Such losses, if any, are considered in terms of increased or additional costs which an MFBI incurs for goods or services, including power, which must be purchased by the MFBI to replace those goods or services which the MFBI would have produced for itself but for the issuance of a Construction Order. Such costs will be limited to the difference between the anticipated cost of production of the goods or services at the MFBI, and the cost of purchasing replacement goods or services.

In addition, section 2(c) of ESECA indicates that FEA may not issue Construction Order NOI's to an MFBI if it determines that an adequate and reliable supply of coal is not expected to be available. To meet this statutory requirement, FEA considers the availability nationwide of total tonnages of coal, based upon the presumption that an MFBI in the early planning process can be designed and constructed to use a wide range of coal types available.

FEA also considers, prior to issuance of an MFBI Construction Order NOI, the existence and effects of any contractual commitment for the construction of the MFBI upon the owner's capability to recover any increase in capital investment required as a result of a Construction Order.

It is to be noted that much of the information used by FEA to make its practicability findings is arguably confidential under 18 U.S.C. 1905. Therefore, such information has not appeared in the Appendix to the NOI. The calculations have been explained in each case and the data are available to the representatives of the owner of the MFBI.

Any questions regarding this Notice should be directed to the FEA National Office as follows: Federal Energy Administration, Code OCU (Construction Order: _____ Installation), Washington, D.C. 20461.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 et seq.), as amended by Pub. L. 94–163; Federal Energy Administration Act of 1974 (15 U.S.C. 761 et seq.), as amended by Pub. L. 94–385; E.O. 11790 (39 FR 23185).)

Issued in Washington, D.C., May 9, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

APPENDIX

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE A CONSTRUCTION ORDER

ESECA and the FEA regulations require FEA to make certain findings and determinations and to consider certain factors before issuing a Construction Order to a Major Fuel Burning Installation (MFBI). FEA's proposed findings, as well as its proposed conclusions with respect to the factors FEA has considered, are set out below with respect to the MFBI's named below. Supporting rationale and conclusions are also set forth.

Docket No.	Owner	Installation	Unit	Location
OCU–6650–3–1 OCU–6650–3–2	Shell Oil Co.	Petrolia plant	E. & P. 4 E. & P. 5	Fellows, Calif.

These findings, determinations and considerations, which are now proposed by FEA, are based on the information that has been provided to and developed by FEA prior to the issuance of this Notice of Intention (NOI) to issue a Construction Order.

Shell Oil Company shall be referred to as the "owner". Petrolia Plant E & P 4 and E & P 5 shall be referred to as the "MFBI's".

I. *Proposed findings.*—A. *The MFBI's are in the early planning process.* Based on an analysis of the information submitted to FEA by the owner on Form FEA C–607–S–0 and information provided by the owner in response to subsequent inquiry to assure the continued applicability and currency of such information, including, as appropriate, an on-site inspection visit, FEA proposes to find that the MFBI's are in the early planning process. This proposed finding is based on the facts, assumptions and reasoning referenced below:

1. Schedule A–2 of Form FEA C–607–S–0 submitted by the owner shows that the preliminary feasibility study was completed.

2. Information supplied by the owner or otherwise acquired by FEA indicates that the early planning process for these MFBI's has not terminated.

3. Schedule A–2 of Form FEA C–607–S–0 submitted by the owner shows that the MFBI's meet the minimum design firing rate requirement.

B. *Within the terms of ESECA, FEA has been unable to determine that an adequate and reliable supply of coal is not expected to be available.* This proposed determination is based upon the facts, interpretations and assumptions stated below:

1. *Coal availability.*—(a) *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the future. United States Department of the Interior, Bureau of Mines (BOM) data show a demonstrated coal reserve base of over 400 billion tons, over half of which is currently technically and economically recoverable (Demonstrated Coal Reserve Base of the United States, by Sulfur Category, on January 1, 1974, Bureau of Mines (May 1975) (hereafter "BOM Survey")). Within these recoverable reserves approximately 200 billion tons contain 1 percent or less sulfur by weight. To determine when certain quantities of these reserves are expected to be available, FEA has examined several studies referenced herein, which together provide the best current evidence as to coal availability.

(b) *National coal production and demand.* The comparison, stated below, of estimated national coal production, national coal demand, and the total tonnage of uncommitted planned coal production (derived from responses to a survey of coal producing companies) shows that there should be sufficient production of coal to meet the total national demand through 1980. Beyond 1980, plans for new production are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future; however, the projected total planned national coal production for 1985 already meets over 99 percent of the total U.S. demand expected in 1985. With time, more potential mine developments will become firm plans, thus increasing the planned production.

(1) *National coal production.*—It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

Year:	*Production potential (million tons)*
1977	732.3
1978	791.6
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The figures shown above are derived from FEA's Coal Mine Expansion Study (May 1976). This study demonstrates that most coal producers did not have firm or accu-

rate plans for new capacity additions beyond 1980. The 1985 projection, therefore, tends to underestimate actual production potential.

An FEA study, Coal Availability Report, April 1977, (hereafter "Availability Report"), indicates current plans for nationwide production of uncommitted coal as follows:

Year:	*Production (million tons)*
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(2) *National demand exclusive of ESECA prohibition order demand.*—The estimated national demand, excluding any increased demand resulting from FEA action under the authority of Section 2(a) of ESECA, is as follows FEA 1976 National Energy Outlook):

Year:	*Demand (million tons)*
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(3) *National ESECA prohibition order demand.*—The estimated potential demand for coal resulting from all Notices of Intention to issue Prohibition Orders to date and from all outstanding Prohibition Orders issued to date under Section 2(a) of ESECA is no more than the following ("Availability Report"):

Year:	*Demand (million tons)*
1978	11.0
1979	22.4
1980	32.5
1981	35.8
1982	57.4
1983	59.8
1984	59.8

(c) *State or local laws.*—FEA has found no state or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none have been brought to FEA's attention.

(d) *Conclusion.*—Potential coal demand from these MFBI's and from all other MFBI's which are currently under consideration to receive Notices of Intention to issue Construction Orders under authority of Section 2(c) of ESECA is not included in the total national demand stated in paragraph 1.(b)(2), above. Coal demand from such MFBI's is also not calculated in currently projected ESECA generated demand since it is infeasible to anticipate specific quality characteristics for the coal that will be required by these MFBI's so far in advance of their actual construction.

As noted previously, plans for new coal production beyond 1980 are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future. The projection for national coal production potential in 1985 cited in paragraph 2.(a), above, tends to underestimate actual production potential.

FEA has considered these facts and the fact that the potential annual demand for coal will increase once these MFBI's and others become operational. FEA expects, however, (based on an analysis of the "BOM Survey", the Coal Mine Expansion Study, the FEA 1976 National Energy Outlook, and the "Availability Report", cited above) that national coal production potential will substantially exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential additional demand for coal if all MFBI's currently under consideration were to receive Construction Orders under Section 2(c) of ESECA. Within the terms of ESECA, FEA has been unable to determine that coal is not expected to be available for these MFBI's once they become operational. The best available evidence suggests that coal production potential will, in fact, considerably exceed all demand for the years pertinent to this proposed order.

The coal for these MFBI's will probably be bought from producers according to regional supply/demand relationships related to the MFBIs' location. FEA observes, however, that the MFBI's could purchase coal in other markets as such production becomes available. (The Feasibility of Considering Expanded Use of Western Coal by Midwestern and Eastern Utilities in the Period 1978 and Beyond, School of Engineering, University of Pennsylvania, November 7, 1975.)

(e) *Coal transportation.*—FEA has considered the availability of national coal transportation facilities. Generally, FEA considers construction lead times pertinent to MFBI's in the early-planning process to be sufficient to allow owners to secure appropriate coal transportation and coal transportation facilities prior to becoming operational.

II. *Factors which ESECA requires FEA to consider.*—A. *The existence and effects of any contractual commitment for the construction of the MFBI's.* FEA has considered the existence and effects of any contractual commitment for the construction of the MFBI's which the owner has reported to FEA in a Schedule of Plan Change Costs attachment to a Form FEA C-607-S-O Schedule A-3, or otherwise. FEA has considered the additional costs which would be incurred in connection with existing contractual commitments should FEA require that the MFBI's be designed and constructed to be capable of using coal as their primary energy source. Accordingly, FEA has included these costs in its consideration of the capability of the owner to recover any increase in capital investment required as a result of a Construction Order.

B. *The capability of the owner to recover any increase in projected capital investment required as a result of a construction order.* FEA has considered, in the manner described below, the capability of the owner to raise and to recover the increased capital investment expected to result from the issuance of a Construction Order.

1. *Increased capital investment required as a result of a construction order.*—FEA has evaluated the additional capital investment costs required in order to design and construct the MFBI's to be capable of burning coal as their primary energy source. This calculation is based on existing FEA information and analysis, as well as information filed with FEA by the owner concerning the cost of equipment and facilities that would have to be acquired. Approximate costs to comply with applicable environmental protection requirements have also been considered, including the cost of compliance with the air pollution control requirements of the Clean Air Act.

2. *Capability of the owner to raise the increased capital investment.*—This analysis is based upon an evaluation of the owner's current financial position as reported in the Dun and Bradstreet Reference Book (March 1977). Where necessary, FEA has performed an independent analysis of the owner's financial capability. In those cases in which an independent analysis of the owner's ability to recover the additional capital investment was performed, FEA related the additional capital investment costs discussed in paragraph B.1., above, and the plan change costs discussed in paragraph II.A., above, to the owner's net property and plant assets, the owner's reported recent construction expenditures and the owner's equity.

In considering the owner's ability to recover the increased capital investment costs, FEA has compared these increased costs, the demonstrated ability of the owner to raise the additional capital, any loss of revenue resulting from a delay, if any, in the commencement of operations of the MFBI's resulting from a Construction Order, the owner's historical profit profile, and a presumed useful life of the MFBI's after construction of 40 years.

In light of such considerations, FEA presumes that the owner's capability to recover any increase in capital is confirmed since the owner can both raise the necessary additional capital for construction with coal burning capability and has historically shown a profit profile.

Appendix

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE A CONSTRUCTION ORDER

ESECA and the FEA regulations require FEA to make certain findings and determinations and to consider certain factors before issuing a Construction Order to a Major Fuel Burning Installation (MFBI). FEA's proposed findings, as well as its proposed conclusions with respect to the factors FEA has considered, are set out below with respect to the MFBI's named below. Supporting rationale and conclusions are also set forth.

Docket No.	Owner	Installation	Unit	Location
OCU-6650-1-1 OCU-6650-1-2	Shell Oil Co.	Pricewell plant	E. & P. 4 E. & P. 5	Bakersfield, Calif.

These findings, determinations, and considerations, which are now proposed by FEA, are based on the information that has been provided to and developed by FEA prior to the issuance of this Notice of Intention (NOI) to issue a Construction Order.

Shell Oil Company shall be referred to as the "owner." Pricewell Plant E & P 4 and E & P 5 shall be referred to as the "MFBI's."

I. *Proposed findings.*—A. *The MFBI's are in the early planning process.* Based on an analysis of the information submitted to FEA by the owner on Form FEA C-607-S-0 and information provided by the owner in response to subsequent inquiry to assure the continued applicability and currency of such information, including, as appropriate, an on-site inspection visit, FEA proposes to find that the MFBI's are in the early planning process. This proposed finding is based on the facts, assumptions and reasoning referenced below:

1. Schedule A-2 of Form FEA C-607-S-0 submitted by the owner shows that the preliminary feasibility study was completed.

2. Information supplied by the owner or otherwise acquired by FEA indicates that the early planning process for these MFBI's has not terminated.

3. Schedule A-2 of Form FEA C-607-S-0 submitted by the owner shows that the MFBI's meet the minimum design firing rate requirement.

B. *Within the terms of ESECA, FEA has been unable to determine that an adequate and reliable supply of coal is not expected to be available.* This proposed determination is based upon the facts, interpretations and assumptions stated below:

1. *Coal availability.*—(a) *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the future. United States Department of the Interior, Bureau of Mines (BOM) data show a demonstrated coal reserve base of over 400 billion tons, over half of which is currently technically and economically recoverable (Demonstrated Coal Reserve Base of the United States, by Sulfur Category, on January 1, 1974, Bureau of Mines (May 1975) (hereafter "BOM Survey")). Within these recoverable reserves approximately 200 billion tons contain 1 percent or less sulfur by weight. To determine when certain quantities of these reserves are expected to be available, FEA has examined several studies referenced herein, which together provide the best current evidence as to coal availability.

(b) *National coal production and demand.* The comparison, stated below, of estimated national coal production, national coal demand, and the total tonnage of uncommitted planned coal production (derived from responses to a survey of coal producing companies) shows that there should be sufficient production of coal to meet the total national demand through 1980. Beyond 1980, plans for new production are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future; however, the projected total planned national coal production for 1985 already meets over 99% of the total U.S. demand expected in 1985. With time, more potential mine developments will become firm plans, thus increasing the planned production.

(1) *National coal production.*—It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

Year:	*Production potential (million tons)*
1977	732.3
1978	791.6
1979	851.4
1980	911.7
1981	960.0
1982	994.3
1983	1,017.4
1984	1,028.7
1985	1,029.6

The figures shown above are derived from FEA's Coal Mine Expansion Study (May 1976). This study demonstrates that most coal producers did not have firm or accurate plans for new capacity additions beyond 1980. The 1985 projection, therefore, tends to underestimate actual production potential.

An FEA study, Coal Availability Report, April 1977, (hereafter "Availability Report"), indicates current plans for nationwide production of uncommitted coal as follows:

Year:	*Production (million tons)*
1978	124.3
1979	243.1
1980	293.3
1981	350.0
1982	369.9
1983	396.2
1984	475.5
1985	544.9

(2) *National demand exclusive of ESECA prohibition order demand.*—The estimated national demand, excluding any increased demand resulting from FEA action under the authority of Section 2(a) of ESECA, is as follows (FEA 1976 National Energy Outlook):

Year:	*Demand (million tons)*
1978	730
1979	764
1980	799
1981	842
1982	887
1983	935
1984	985
1985	1,040

(3) *National ESECA prohibition order demand.*—The estimated potential demand for coal resulting from all Notices of Intention to issue Prohibition Orders to date and from all outstanding Prohibition Orders issued to date under Section 2(a) of ESECA is no more than the following ("Availability Report"):

Year:	*Demand (million tons)*
1978	11.0
1979	22.4
1980	32.5
1981	35.8
1982	57.4
1983	59.8
1984	59.8

(c) *State or local laws.* FEA has found no state or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none have been brought to FEA's attention.

(d) *Conclusion.* Potential coal demand from these MFBI's and from all other MFBI's which are currently under consideration to receive Notices of Intention to issue Construction Orders under authority of section 2(c) of ESECA is not included in the total national demand stated in paragraph 1.(b)(2), above. Coal demand from such MFBI's is also not calculated in currently projected ESECA generated demand since it is infeasible to anticipate specific quality characteristics for the coal that will be required by these MFBI's so far in advance of their actual construction.

As noted previously, plans for new coal production beyond 1980 are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future. The projection for national coal production potential in 1985 cited in paragraph 2.(a), above, tends to underestimate actual production potential.

FEA has considered these facts and the fact that the potential annual demand for coal will increase once these MFBI's and others become operational. FEA expects, however, (based on an analysis of the "BOM Survey", the Coal Mine Expansion Study, the FEA 1976 National Energy Outlook, and the "Availability Report", cited above) that national coal production potential will substantially exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential additional demand for coal if all MFBI's currently under consideration were to receive Construction Orders under Section 2(c) of ESECA. Within the terms of ESECA, FEA has been unable to determine that coal is not expected to be available for these MFBI's once they become operational. The best available evidence suggests that coal production potential will, in fact, considerably exceed all demand for the years pertinent to this proposed order.

The coal for these MFBI's will probably be bought from producers according to regional supply/demand relationships related to the MFBI's location. FEA observes, however, that the MFBI's could purchase coal in other markets as such production becomes available. (The Feasibility of Considering Expanded Use of Western Coal by Midwestern and Eastern Utilities in the Period 1978 and Beyond, School of Engineering, University of Pennsylvania, November 7, 1975.)

(e) *Coal transportation.* FEA has considered the availability of national coal transportation facilities. Generally, FEA considers construction lead times pertinent to MFBI's in the early-planning process to be sufficient to allow owners to secure appropriate coal transportation and coal transportation facilities prior to becoming operational.

II. *Factors which ESECA requires FEA to consider.*—A. *The existence and effects of any contractual commitments for the construction of the MFBI's.* FEA has considered the existence and effects of any contractual commitment for the construction of the MFBI's which the owner has reported to FEA in a Schedule of Plan Change Costs attachment to a Form FEA C-607-S-0 Schedule A-3, or otherwise. FEA has considered the additional costs which would be incurred in connection with existing contractual commitments should FEA require that the MFBI's be designed and constructed to be capable of using coal as their primary energy source. Accordingly, FEA has included these costs in its consideration of the capability of the owner to recover any increase in capital investment required as a result of a Construction Order.

B. *The capability of the owner to recover any increase in projected capital investment required as a result of a construction order.* FEA has considered, in the manner described below, the capability of the owner to raise and to recover the increased capital investment expected to result from the issuance of a Construction Order.

1. *Increased capital investment required as a result of a construction order.*—FEA has evaluated the additional capital investment costs required in order to design and construct the MFBI's to be capable of burning coal as their primary energy source. This calculation is based on existing FEA information and analysis, as well as information filed with FEA by the owner concerning the cost of equipment and facilities that would have to be acquired. Approximate costs to comply with applicable environmental protection requirements have also been considered, including the cost of compliance with the air pollution control requirements of the Clean Air Act.

2. *Capability of the owner to raise the increased capital investment.*—This analysis is based upon an evaluation of the owner's current financial position as reported in the Dun and Bradstreet Reference Book (March 1977). Where necessary, FEA has performed an independent analysis of the owner's financial capability. In those cases in which an independent analysis of the owner's ability to recover the additional capital investment was performed, FEA related the addi-

tional capital investment costs discussed in paragraph B.1., above, and the plan change costs discussed in paragraph II.A., above, to the owner's net property and plant assets, the owner's reported recent construction expenditures and the owner's equity.

In considering the owner's ability to recover the increased capital investment costs, FEA has compared these increased costs, the demonstrated ability of the owner to raise the additional capital, any loss of revenue resulting from a delay, if any, in the commencement of operations of the MFBI's resulting from a Construction Order, the owner's historical profit profile, and a presumed useful life of the MFBI's after construction of 40 years. In light of such considerations, FEA presumes that the owner's capability to recover any increase in capital is confirmed since the owner can both raise the necessary additional capital for construction with coal burning capability and has historically shown a profit profile.

APPENDIX

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE A CONSTRUCTION ORDER

ESECA and the FEA regulations require FEA to make certain findings and determinations and to consider certain factors before issuing a Construction Order to a Major Fuel Burning Installation (MFBI). FEA's proposed findings, as well as its proposed conclusions with respect to the factors FEA has considered, are set out below with respect to the MFBI's named below. Supporting rationale and conclusions are also set forth.

Docket No.	Owner	Installation	Unit	Location
OCU-6650-2-1	Shell Oil Co.	Marco plant	E. & P. 3	Bakersfield, Calif.
OCU-6650-2-2			E. & P. 4	

These findings, determinations, and considerations, which are now proposed by FEA, are based on the information that has been provided to and developed by FEA prior to the issuance of this Notice of Intention (NOI) to issue a Construction Order.

Shell Oil Company shall be referred to as the "owner". The Marco Plant E & P 3 and E & P 4 shall be referred to as the "MFBI's".

I. *Proposed findings.—A. The MFBI's are in the early planning process.* Based on an analysis of the information submitted to FEA by the owner on Form FEA C-607-S-0 and information provided by the owner in response to subsequent inquiry to assure the continued applicability and currency of such information, including, as appropriate, an on-site inspection visit, FEA proposes to find that the MFBI's are in the early planning process. This proposed finding is based on the facts, assumptions and reasoning referenced below:

1. Schedule A-2 of Form FEA C-607-S-O submitted by the owner shows that the preliminary feasibility study was completed.

2. Information suppled by the owner or otherwise acquired by FEA indicates that the early planning process for these MFBI's has not terminated.

3. Schedule A-2 of Form FEA C-607-S-0 submitted by the owner shows that the MFBI's meet the minimum design firing rate requirement.

B. *Within the terms of ESECA, FEA has been unable to determine that an adequate and reliable supply of coal is not expected to be available.* This proposed determination is based upon the facts, interpretations and assumptions stated below:

1. *Coal availability.*— (a) *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the future. United States Department of the Interior, Bureau of Mines (BOM) data show a demonstrated coal reserve base of over 400 billion tons, over half of which is currently technically and economically recoverable (Demonstrated Coal Reserve Base of the United States, by Sulfur Category, on January 1, 1974, Bureau of Mines (May 1975) (hereafter "BOM Survey")). Within these recoverable reserves approximately 200 billion tons contain 1% or less sulfur by weight. To determine when certain quantities of these reserves are expected to be available, FEA has examined several studies referenced herein, which together provide the best current evidence as to coal availability.

(b) *National coal production and demand.* The comparison, stated below, of estimated national coal production, national coal demand, and the total tonnage of uncommitted planned coal production (derived from responses to a survey of coal producing companies) shows that there should be sufficient production of coal to meet the the total national demand through 1980. Beyond 1980, plans for new production are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future; however, the projected total planned national coal production for 1985 already meets over 93% of the total U.S. demand expected in 1985. With time, more potential mine developments will become firm plans, thus increasing the planned production.

(1) *National coal production.*—It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

Year:	*Production potential (million tons)*
1977	732.3
1978	791.6
1979	851.4
1980	911.7
1981	960.0
1982	994.3
1983	1,017.4
1984	1,028.7
1985	1,029.6

The figures shown above are derived from FEA's Coal Mine Expansion Study (May 1976). This study demonstrates that most coal producers did not have firm or accurate plans for new capacity additions beyond 1980. The 1985 projection, therefore, tends to underestimate actual production potential.

An FEA study, Coal Availability Report, April 1977, (hereafter "Availability Report"), indicates current plans for nationwide production of uncommitted coal as follows:

Year:	*Production (million tons)*
1978	124.3
1979	243.1
1980	293.3
1981	350.0
1982	369.9
1983	396.2
1984	475.5
1985	544.9

(2) *National demand exclusive of ESECA prohibition order demand.*—The estimated national demand, excluding any increased demand resulting from FEA action under the authority of Section 2(a) of ESECA, is as follows (FEA 1976 National Energy Outlook):

Year:	*Demand (million tons)*
1978	730
1979	764
1980	799
1981	842
1982	887
1983	935
1984	985
1985	1,040

(3) *National ESECA prohibition order demand.*—The estimated potential demand for coal resulting from all Notices of Intention to issue Prohibition Orders to date and from all outstanding Prohibition Orders issued to date under Section 2(a) of ESECA is no more than the following ("Availability Report"):

Year:	*Demand (million tons)*
1978	11.0
1979	22.4
1980	32.5
1981	35.8
1982	57.4
1983	59.8
1984	59.8

(c) *State or local laws.* FEA has found no state or local laws or policies limiting the extraction or utilization of coal that would adveresely affect these production figures, and none have been brought to FEA's attention.

(d) *Conclusion.* Potential coal demand from these MFBI's and from all other MFBI's which are currently under consideration to receive Notices of Intention to issue Construction Orders under authority of Section 2(c) of ESECA is not included in the total national demand tsated in paragraph 1.(b)(2), above. Coal demand from such MFBI's is also not calculated in currently projected ESECA generated demand since it is infeasible to anticipate specific quality characteristics for the coal that will be required by these MFBI's so far in advance of their actual construction.

As noted previously, plans for new coal production beyond 1980 are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future. The projection for national coal production potential in 1985 cited in paragraph 2.(a), above, tends to underestimate actual production potential.

FEA has considered these facts and the fact that the potential annual demand for coal will increase once these MFBI's and others become operational. FEA expects, however, (based on an analysis of the "BOM Survey", the Coal Mine Expansion Study, the FEA 1976 National Energy Outlook, and the "Availability Report", cited above) that national coal production potential will substantially exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential additional demand for coal if all MFBI's currently under consideration were to receive Construction Orders under Section 2(c) of ESECA. Within the terms of ESECA, FEA has been unable to determine that coal is not expected to be available for these MFBI's once they become operational. The best available evidence suggests that coal production potential will, in fact, considerably exceed all demand for the years pertinent to this proposed order.

The coal for these MFBI's will probably be bought from producers according to regional supply/demand relationships related to the MFBI's location. FEA observes, however, that the MFBI's could purchase coal in other markets as such production becomes available. (The Feasibility of Considering Expanded Use of Western Coal by Midwestern and Eastern Utilities in the Period 1978 and Beyond, School of Engineer-

ing, University of Pennsylvania, November 7, 1975.)

(e) *Coal transportation.* FEA has considered the availability of national coal transportation facilities. Generally, FEA considers construction lead times pertinent to MFBI's in the early-planning process to be sufficient to allow owners to secure appropriate coal transportation and coal transportation facilities prior to becoming operational.

II. *Factors which ESECA requires FEA to consider.*—A. *The existence and effects of any contractual commitment for the construction of the MFBI's.* FEA has considered the existence and effects of any contractual commitment for the construction of the MFBI's which the owner has reported to FEA in a Schedule of Plan Change Costs attachment to a Form FEA C-607-S-0 Schedule A-3, or otherwise. FEA has considered the additional costs which would be incurred in connection with existing contractual commitments should FEA require that the MFBI's be designed and constructed to be capable of using coal as their primary energy source. Accordingly, FEA has included these costs in its consideration of the capability of the owner to recover any increase in capital investment required as a result of a Construction Order.

B. *The capability of the owner to recover any increase in projected capital investment required as a result of a construction order.* FEA has considered, in the manner described below, the capability of the owner to raise and to recover the increased capital investment expected to result from the issuance of a Construction Order.

1. *Increased capital investment required as a result of a construction order.*—FEA has evaluated the additional capital investment costs required in order to design and construct the MFBI's to be capable of burning coal as their primary energy source. This calculation is based on existing FEA information and analysis, as well as information filed with FEA by the onwer concerning the cost of equipment and facilities that would have to be acquired. Approximate costs to comply with applicable environmental protection requirements have also been considered, including the cost of compliance with the air pollution control requirements of the Clean Air Act.

2. *Capability of the owner to raise the increased capital investment.*—This analysis is based upon an evaluation of the owner's current financial position as reported in the Dun and Bradstreet Reference Book (March 1977). Where necessary, FEA has performed an independent analysis of the owner's financial capability. In those cases in which an independent analysis of the owner's ability to recover the additional capital investment was performed, FEA related the additional capital investment costs discussed in paragraph B.1., above, and the plan change costs discussed in paragraph II.A., above, to the owner's net property and plant assets, the owner's reported recent construction expenditures and the owner's equity.

In considering the owner's ability to recover the increased capital investment costs, FEA has compared these increased costs, the demonstrated ability of the owner to raise the additional capital, any loss of revenue resulting from a delay, if any, in the commencement of operations of the MFBI's resulting from a Construction Order, the owner's historical profit profile, and a presumed useful life of the MFBI's after construction of 40 years. In light of such considerations, FEA presumes that the owner's capability to recover any increase in capital is confirmed since the owner can both raise the necessary additional capital for construction with coal burning capability and has historically shown a profit profile.

APPENDIX [1]

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE A CONSTRUCTION ORDER

ESECA and the FEA regulations require FEA to make certain findings and determinations and to consider certain factors before issuing a Construction Order to a Major Fuel Burning Installation (MFBI). FEA's proposed findings, as well as its proposed conclusions with respect to the factors FEA has considered, are set out below with respect to the MFBI's named below. Supporting rationale and conclusions are also set forth.

Docket No.	Owner	Installation	Unit	Location
OCU-8330-2-1 OCU-8340-2-2	Standard Oil Co. of California/ Chevron, U.S.A., Inc.	NCD Cymric area, sec. 97.	Undesignated.	Oildale, Calif.

[1] Attached to this Appendix is FEA's MFBI Construction Order Candidate Identification and Selection Methodology.

These findings, determinations and considerations, which are now proposed by FEA, are based on the information that has been provided to and developed by FEA prior to the issuance of this Notice of Intention (NOI) to issue a Construction Order.

Standard Oil Company of California/Chevron, U.S.A., Incorporated shall be referred to as the "owner." NCD Cymric Area, Section 97, Undesignated Units shall be referred to as the "MFBI's."

I. *Proposed findings.*

A. *The MFBI's are in the early planning process.* Based on an analysis of the information submitted to FEA by the owner on Form FEA C-607-S-0 and information provided by the owner in response to subsequent inquiry to assure the continued applicability and currency of such information, including, as appropriate, an on-site inspection visit, FEA proposes to find that the MFBI's are in the early planning process. This proposed finding is based on the facts, assumptions and reasoning referenced below:

1. Schedule A-2 of Form FEA C-607-S-0 submitted by the owner shows that the preliminary feasibility study was completed.

2. Information supplied by the owner or otherwise acquired by FEA indicates that the early planning process for these MFBI's has not terminated.

3. Schedule A-2 of Form FEA C-607-S-0 submitted by the owner shows that the MFBI's meet the minimum design firing rate requirement.

B. *Within the terms of ESECA, FEA has been unable to determine that an adequate and reliable supply of coal is not expected to be available.* This proposed determination is based upon the facts, interpretations and assumptions stated below:

1. *Coal availability.*—(a) *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the future. United States Department of the Interior, Bureau of Mines (BOM) data show a demonstrated coal reserve base of over 400 billion tons, over half of which is currently technically and economically recoverable (Demonstrated Coal Reserve Base of the United Stats, by Sulfur Category, on January 1, 1974, Bureau of Mines (May 1975) [hereafter "BOM Survey"]). Within these recoverable reserves approximately 200 billion tons contain 1 percent or less sulfur by weight. To determine when certain quantities of these reserves are expected to be available, FEA has examined several studies referenced herein, which together provide the best current evidence as to coal availability.

(b) *National coal production and demand.* The comparison, stated below, of estimated national coal production, national coal demand, and the total tonnage of uncommitted planned coal production (derived from responses to a survey of coal producing companies) shows that there should be sufficient production of coal to meet the total national demand through 1980. Beyond 1980, plans for new production are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future; however, the projected total planned national coal production for 1985 already meets over 99 percent of the total U.S. demand expected in 1985. With time, more potentional mine developments will become firm plans, thus increasing the planned production.

(1) *National coal production.* It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

Year:	*Production potential (million tons)*
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The figures shown above are derived from FEA's Coal Mine Expansion Study (May 1976). This study demonstrates that most coal producers did not have firm or accurate plans for new capacity additions beyond 1980. The 1985 projection, therefore, tends to underestimate actual production potential.

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Year:	*Production (million tons)*
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(2) *National demand exclusive of ESECA prohibition order demand.* The estimated national demand, excluding any increased demand resulting from FEA action under the authority of Section 2(a) of ESECA, is as follows (FEA 1976 National Energy Outlook):

Year:	*Demand (million tons)*
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(3) *National ESECA prohibition order demand.* The estimated potential demand for coal resulting from all Notices of Intention to issue prohibition orders to date and from

all outstanding Prohibition Orders issued to date under Section 2(a) of ESECA is no more than the following ("Availability Report"):

Year:	*Demand (million tons)*
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1980	32.5
1981	35.8
1982	57.4
1983	59.8
1984	59.8

(c) *State or local laws.* FEA has found no state or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none have been brought to FEA's attention.

(d) *Conclusion.* Potential coal demand from these MFBI's and from all other MFBI's which are currently under consideration to receive Notices of Intention to issue Construction Orders under authority of section 2(c) of ESECA is not included in the total national demand stated in paragraph 1.(b)(2), above. Coal demand from such MFBI's is also not calculated in currently projected ESECA generated demand since it is infeasible to anticipate specific quality characteristics for the coal that will be required by these MFBI's so far in advance of their actual construction.

As noted previously, plans for new coal production beyond 1980 are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future. The projection for national coal production potential in 1985 cited in paragraph 2.(a), above, tends to underestimate actual production potential.

FEA has considered these facts and the fact that the potential annual demand for coal will increase once these MFBI's and others become operational.

FEA expects, however, (based on an analysis of the "BOM Survey", the Coal Mine Expansion Study, the FEA 1976 National Energy Outlook, and the "Availability Report", cited above) that national coal production potential will substantially exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential additional demand for coal if all MFBI's currently under consideration were to receive Construction Orders under section 2(c) of ESECA. Within the terms of ESECA, FEA has been unable to determine that coal is not expected to be available for these MFBI's once they become operational. The best available evidence suggests that coal production potential will, in fact, considerably exceed all demand for the years pertinent to this proposed order.

The coal for these MFBI's will probably be bought from producers according to regional supply/demand relationships related to the MFBIs' location. FEA observes, however, that the MFBI's could purchase coal in other markets as such production becomes available. (The Feasibility of Considering Expanded Use of Western Coal by Midwestern and Eastern Utilities in the Period 1978 and Beyond, School of Engineering, University of Pennsylvania, November 7, 1975.)

(e) *Coal transportation.* FEA has considered the availability of national coal transportation facilities. Generally, FEA considers construction lead times pertinent to MFBI's in the early-planning process to be sufficient to allow owners to secure appropriate coal transportation and coal transportation facilities prior to becoming operational.

II. *Factors which ESECA requires FEA to consider.*

A. *The existence and effects of any contractual commitment for the construction of the MFBI's.* FEA has considered the existence and effects of any contractual commitment for the construction of the MFBI's which the owner has reported to FEA in a Schedule of Plan Change Costs attachment to a Form FEA C-607-S-0 Schedule A-3, or otherwise. FEA has considered the additional costs which would be incurred in connection with existing contractual commitments should FEA require that the MFBI's be designed and constructed to be capable of using coal as their primary energy source. Accordingly, FEA has included these costs in its consideration of the capability of the owner to recover any increase in capital investment required as a result of a Construction Order.

B. *The capability of the owner to recover any increase in projected capital investment required as a result of a construction order.* FEA has considered, in the manner described below, the capability of the owner to raise and to recover the increased capital investment expected to result from the issuance of a Construction Order.

1. *Increased capital investment required as a result of a construction order.* FEA has evaluated the additional capital investment costs required in order to design and construct the MFBI's to be capable of burning coal as their primary energy source. This calculation is based on existing FEA information and analysis, as well as information filed with FEA by the owner concerning the cost of equipment and facilities that would have to be acquired. Approximate costs to comply with applicable environmental protection requirements have also been considered, including the cost of compliance with the air pollution control requirements of the Clean Air Act.

2. *Capability of the owner to raise the increased capital investment.* This analysis is based upon an evaluation of the owner's current financial position as reported in the Dun and Bradstreet Reference Book (March 1977). Where necessary, FEA has performed an independent analysis of the owner's financial capability. In those cases in which an independent analysis of the owner's ability to recover the additional capital investment was performed, FEA related the additional capital investment costs discussed in paragraph B.1., above, and the plan change costs discussed in paragraph II. A., above to the owner's net property and plant assets, the owner's reported recent construction expenditures and the owner's equity.

In considering the owner's ability to recover the increased capital investment costs, FEA has compared these increased costs, the demonstrated ability of the owner to raise the additional capital, any loss of revenue resulting from a delay, if any, in the commencement of operations of the MFBI's resulting from a Construction Order, the owner's historical profit profile, and a presumed useful life of the MFBI's after construction of 40 years.

In light of such considerations, FEA presumes that the owner's capability to recover any increase in capital is confirmed since the owner can both raise the necessary additional capital for construction with coal burning capability and has historically shown a profit profile.

APPENDIX[2]

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE A CONSTRUCTION ORDER

ESECA and the FEA regulations require FEA to make certain findings and determinations and to consider certain factors before issuing a Construction Order to a Major Fuel Burning Installation (MFBI). FEA's proposed findings, as well as its proposed conclusions with respect to the factors FEA has considered, are set out below with respect to the MFBI's named below. Supporting rationale and conclusions are also set forth.

Docket No.	Owner	Installation	Unit	Location
OCU-8330-1-1 OCU-8330-1-2	Standard Oil Co. of California/ Chevron, U.S.A., Inc.	NCD Bakersfield area, sec. 27, Kern front.	Undesignated.	Bakersfield, Calif.

[2] Attached to this Appendix is FEA's MFBI Construction Order Candidate Identification and Selection Methodology.

These findings, determinations, and considerations, which are now proposed by FEA, are based on the information that has been provided to and developed by FEA prior to the issuance of this Notice of Intention (NOI) to issue a Construction Order.

Standard Oil Company of California/ Chevron, U.S.A., Incorporated shall be referred to as the "owner". NCD Bakersfield Area, Section 27, Kern Front Undesignated Units shall be referred to as the "MFBI's".

I. *Proposed findings.*—A. *The MFBI's are in the early planning process.* Based on an analysis of the information submitted to FEA by the owner on Form FEA C-607-S-0 and information provided by the owner in response to subsequent inquiry to assure the continued applicability and currency of such information, including, as appropriate, an on-site inspection visit, FEA proposes to find that the MFBI's are in the early planning process. This proposed finding is based on the facts, assumptions and reasoning referenced below:

1. Schedule A-2 of Form FEA C-607-S-0 submitted by the owner shows that the preliminary feasibility study was completed.

2. Information supplied by the owner or otherwise acquired by FEA indicates that the early planning process for these MFBI's has not terminated.

3. Schedule A-2 of Form FEA C-607-S-0 submitted by the owner shows that the MFBI's meet the minimum design firing rate requirement.

B. *Within the terms of ESECA, FEA has been unable to determine that an adequate and reliable supply of coal is not expected to be available.* This proposed determination is based upon the facts, interpretations and assumptions stated below:

1. *Coal availability.*—(a) *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the future. United States Department of the Interior, Bureau of Mines (BOM) data show a demonstrated coal reserve base of over 400 billion tons, over half of which is currently technically and economically recoverable (Demonstrated Coal Reserve Base of the United States, by Sulfur Category, on January 1, 1974, Bureau of Mines (May 1975) (hereafter "BOM Survey")). Within these recoverable reserves approximately 200 billion tons contain 1% or less sulfur by weight. To determine when certain quantities of these reserves are expected to be available, FEA has examined several studies referenced herein, which together provide the best current evidence as to coal availability.

(b) *National coal production and demand.* The comparison, stated below, of estimated national coal production, national coal demand, and the total tonnage of uncommitted planned coal production (derived from responses to a survey of coal producing com-

panies) shows that there should be sufficient production of coal to meet the total national demand through 1980. Beyond 1980, plans for new production are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future; however, the projected total planned national coal production for 1985 already meets over 99 percent of the total U.S. demand expected in 1985. With time, more potential mine developments will become firm plans, thus increasing the planned production.

(1) *National coal production.*—It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

Year:	*Production potential (million tons)*
1977	732.3
1978	791.6
1979	851.4
1980	911.7
1981	960.0
1982	994.3
1983	1,017.4
1984	1,028.7
1985	1,029.6

The figures shown above are derived from FEA's Coal Mine Expansion Study (May 1976). This study demonstrates that most coal producers did not have firm or accurate plans for new capacity additions beyond 1980. The 1985 projection, therefore, tends to underestimate actual production potential.

An FEA study, Coal Availability Report, April 1977 (hereafter "Availability Report"), indicates current plans for nationwide production of uncommitted coal as follows:

Year:	*Production (million tons)*
1978	124.3
1979	243.1
1980	293.3
1981	350.0
1982	369.9
1983	396.2
1984	475.5
1985	544.9

(2) *National demand exclusive of ESECA prohibition order demand.*—The estimated national demand, excluding any increased demand resulting from FEA action under the authority of Section 2(a) of ESECA, is as follows (FEA 1976 National Energy Outlook):

Year:	*Demand (million tons)*
1978	730
1979	764
1980	799
1981	842
1982	887
1983	935
1984	985
1985	1,040

(3) *National ESECA prohibition order demand.*—The estimated potential demand for coal resulting from all Notices of Intention to issue Prohibition Orders to date and from all outstanding Prohibition Orders issued to date under Section 2(a) of ESECA is no more than the following ("Availability Report"):

Year:	*Demand (million tons)*
1978	11.0
1979	22.4
1980	32.5
1981	35.8
1982	57.4
1983	59.8
1984	59.8

(c) *State or local laws.* FEA has found no state or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none have been brought to FEA's attention.

(d) *Conclusion.* Potential coal demand from these MFBI's and from all other MFBI's which are currently under consideration to receive Notices of Intention to issue Construction Orders under authority of Section 2(c) of ESECA is not included in the total national demand stated in paragraph 1.(b)(2), above. Coal demand from such MFBI's is also not calculated in currently projected ESECA generated demand since it is infeasible to anticipate specific quality characteristics for the coal that will be required by these MFBI's so far in advance of their actual construction.

As noted previously, plans for new coal production beyond 1980 are not yet fully developed because few coal producers have firm expansion plans that extend that far into the future. The projection for national coal production potential in 1985 cited in paragraph 2.(a), above, tends to underestimate actual production potential.

FEA has considered these facts and the fact that the potential annual demand for coal will increase once these MFBI's and others become operational. FEA expects, however, (based on an analysis of the "BOM Survey", the Coal Mine Expansion Study, the FEA 1976 National Energy Outlook, and the "Availability Report", cited above) that national coal production potential will substantially exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential additional demand for coal if all MFBI's currently under consideration were to receive Construction Orders under Section 2(c) of ESECA. Within the terms of ESECA, FEA has been unable to determine that coal is not expected to be available for these MFBI's once they become operational. The best available evidence suggests that coal production potential will, in fact, considerably exceed all demand for the years pertinent to this proposed order.

The coal for these MFBI's will probably be bought from producers according to regional supply/demand relationships related to the MFBI's location. FEA observes, however, that the MFBI's could purchase coal in other markets as such production becomes available. (The Feasibility of Considering Expanded Use of Western Coal by Midwestern and Eastern Utilities in the Period 1978 and Beyond, School of Engineering, University of Pennsylvania, November 7, 1975.)

(e) *Coal transportation.* FEA has considered the availability of national coal transportation facilities. Generally, FEA considers construction lead times pertinent to MFBI's in the early-planning process to be sufficient to allow owners to secure appropriate coal transportation and coal transportation facilities prior to becoming operational.

II. *Factors which ESECA requires FEA to consider.*—A. *The existence and effects of any contractual commitment for the construction of the MFBI's.* FEA has considered the existence and effects of any contractual commitment for the construction of the MFBI's which the owner has reported to FEA in a Schedule of Plan Change Costs attachment to a Form FEA C-607-S-0 Schedule A-3, or otherwise. FEA has considered the additional costs which would be incurred in connection with existing contractual commitments should FEA require that the MFBI's be designed and constructed to be capable of using coal as their primary energy source. Accordingly, FEA has included these costs in its consideration of the capability of the owner to recover any increase in capital investment required as a result of a Construction Order.

B. *The capability of the owner to recover any increase in projected capital investment required as a result of a construction order.* FEA has considered, in the manner described below, the capability of the owner to raise and to recover the increased capital investment expected to result from the issuance of a Construction Order.

1. *Increased capital investment required as a result of a construction order.*— FEA has evaluated the additional capital investment costs required in order to design and construct the MFBI's to be capable of burning coal as their primary energy source. This calculation is based on existing FEA information and analysis, as well as information filed with FEA by the owner concerning the cost of equipment and facilities that would have to be acquired. Approximate costs to comply with applicable environmental protection requirements have also been considered, including the cost of compliance with the air pollution control requirements of the Clean Air Act.

2. *Capability of the owner to raise the increased capital investment.*—This analysis is based upon an evaluation of the owner's current financial position as reported in the Dun and Bradstreet Reference Book, (March 1977). Where necessary, FEA has performed an independent analysis of the owner's financial capability. In those cases in which an independent analysis of the owner's ability to recover the additional capital investment was performed, FEA related the additional capital investment costs discussed in paragraph B.1, above, and the plan change costs discussed in paragraph II. A., above, to the owner's net property and plant assets, the owner's reported recent construction expenditures and the owner's equity.

In considering the owner's ability to recover the increased capital investment costs, FEA has compared these increased costs, the demonstrated ability of the owner to raise the additional capital, any loss of revenue resulting from a delay, if any, in the commencement of operations of the MFBI's resulting from a Construction Order, the owner's historical profit profile, and a presumed useful life of the MFBI's after construction of 40 years. In light of such considerations, FEA presumes that the owner's capability to recover any increase in capital is confirmed since the owner can both raise the necessary additional capital for construction with coal burning capability and has historically shown a profit profile.

[FR Doc.77-13702 Filed 5-16-77;8:45 am]

federal register

TUESDAY, MAY 17, 1977

PART IV

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

■

SURFACE MINING REGULATIONS

Competitive Coal Leasing; Correction

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2418]

PART 3040—ENVIRONMENT AND SAFETY

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS, GENERAL

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Competitive Coal Leasing Surface Mining Regulations: Coal; Correction

AGENCY: Land Management Bureau, Interior.

ACTION: Correction.

SUMMARY: This document corrects a final rule that appeared at page 4442 in the FEDERAL REGISTER of Tuesday, January 23, 1977 (FR Doc. 77-2256). Several minor errors were made in the text of the rulemaking document and the numbering system used in the document is not consistent with the numbering system used throughout Title 43. This document corrects the errors in the text and changes the numbering to conform with the numbering system used in Title 43.

EFFECTIVE DATE: May 17, 1977.

SUPPLEMENTARY INFORMATION: The final rulemaking document amended Parts 3040, 3500, and 3520 of Title 43 of the Code of Federal Regulations. Several minor errors were made in the text of the rulemaking document and the numbering system used in the document is not consistent with the numbering system used throughout Title 43. This document corrects the errors in the text and changes the numbering to conform with the numbering system used in Title 43. In connection with the renumbering process, sections of the rulemaking are rearranged to place them in proper sequence. No substantive changes are made in the final rulemaking; therefore, rulemaking procedures and public participation are not considered necessary.

FOR FURTHER INFORMATION CONTACT:

Billy R. Templeton, 202-343-8735.

Final rulemaking published on pages 4442 through 4457 of the FEDERAL REGISTER of January 25, 1977, is hereby corrected to read as follows:

PART 3040—ENVIRONMENT AND SAFETY

1. Subpart 3041, in Title 43, Part 3040 is revised as follows:

Subpart 3041—Surface Management and Protection

Sec.

§ 3041.0-1 Purpose.

(a) The purpose of this subpart is to establish rules and regulations to be followed in the management of the federally-owned coal estate consistent with the policies, goals, and objectives established by the Acts cited in § 3041.0-3 of this Subpart, regardless of surface ownership, to ensure effective and reasonable regulation of surface coal mining operations in accordance with the requirements hereof, as an appropriate and necessary means to minimize so far as practicable the adverse social, economic and environmental effects of such operations.

§ 3041.0-3 Authorities.

The regulations contained in this Subpart are issued pursuant to the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181-287), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), and in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended, (42 U.S.C 4321-47). Regulations governing the issuance of Federal coal leases and licenses are found in 43 CFR 3500 of this Chapter. Regulations governing operations conducted on lands subject to lease, permit, or license are found in 30 CFR 211. Regulations setting forth the general and basic policies for disposal and management of the public lands are found in 43 CFR 1725 of this Chapter.

§ 3041.0-4 Responsibilities.

(a) The Bureau of Land Management (BLM) exercises at the Bureau level the Secretary's discretionary authority to determine whether or not mineral leases and licenses are to be issued in accordance with 43 CFR Part 3500. The BLM is responsible for issuing coal leases and licenses, and is the office of record in mineral leasing matters.

(b) The Geological Survey (GS) exercises the Secretary's authority regarding operations conducted within the area of operations by permittees, lessees, and licensees and determines the action to be taken by them from the standpoint of the development, conservation, and management of mineral resources under the jurisdiction of the Department. The Geological Survey is responsible for all geologic, engineering, and economic value determinations for the Department's mineral leasing program. These determinations include: the mineral characteristics of lease and permit areas; parceling; appropriate resource evaluation; reserves; investments, diligent development, and minimum production requirements; and all other terms and conditions relating to mineral operations under leases and licenses.

(c) The BLM or other Federal surface managing agency, in consultation with the GS and the surface owner if other than the United States, formulates the requirements to be incorporated in leases and licenses for the protection of the surface and nonmineral resources and for reclamation, using the reclamation obligations and standards of performance contained in § 3041.2-2 of these regulations and in 30 CFR Part 211.40.

(d) The GS reviews and approves exploration and mining plans, and authorizes the abandonment of operations, in consultation with the BLM or other appropriate Federal surface managing agency, and the surface owner, if other than the United States, on the adequacy of the surface use, environmental protection, and reclamation aspects of such plans and will not grant approval if inconsistent with the BLM's or other Federal surface managing agency's recommendations without further discussions and referrals for resolution pursuant to 30 CFR Part 211.

(e) As to the lands outside of the area of operations, the authorized officer of the BLM or other appropriate Federal surface managing agency is responsible for conducting compliance examinations and for assuring compliance by the lessee or licensee with the requirements of this Subpart, and the terms and conditions of a lease or license and for reporting noncompliance to the Mining Supervisor for appropriate action. As to the lands inside the area of operations the GS examines operations to ensure compliance by the lessee or licensee with the terms and conditions set forth in the provisions of any lease or license or any approved mining or exploration plan. GS refers to BLM any instance of noncompliance with lease terms which may require cancellation action, and BLM may initiate such action. With respect to approval of access roads, pipelines, utility routes and other surface uses outside the area of operations, the BLM, or other Federal surface managing agency, has the primary responsibility but obtains the recommendations of the GS before taking final actions. Except as may be expressly provided for in § 3041.7 of this Subpart and 30 CFR Part 211.72, orders to operators for any remedial action are the exclusive responsibility of the Geological Survey.

(f) Subject to the supervisory authority of the Secretary, the regulations in this Subpart shall be administered by the Director, Bureau of Land Management through the authorized officers having jurisdiction over the lands subject to these regulations and authorized to perform the duties described. Prior to issuance of any coal lease or license, the authorized officer shall consult with and accept and consider recommendations from the Mining Supervisor, the Federal surface managing agency when other than the BLM, or the surface owner, as to the terms and conditions required to

achieve the purpose of this Subpart. Any disagreements that cannot be resolved between the GS and BLM arising in connection with any such issuance of a lease or license will be referred for resolution to the appropriate Assistant Secretaries or to the Under Secretary of the Department of the Interior. Leases issued for lands, the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior, shall contain the terms and conditions prescribed by that agency with respect to the use and protection of the nonmineral interests in those lands.

§ 3041.0–5 Definitions.

As used in this Subpart, the following terms shall have the following meanings:

(a) *"Acid or toxic producing materials"* means natural or disturbed earth materials having chemical and physical characteristics that, under mining or postmining conditions of drainage, exposure, or other processes, may produce effluents that contain chemical constituents, such as acids, bases, or metallic compounds, in sufficient concentration to individually or in combination adversely affect the environment.

(b) *"Affected lands"* means any lands affected or to be affected by exploration, development, and mining operations and the construction of facilities necessary and related to such operations.

(c) *"Approximate original contour"* means the surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining (although not necessarily the original elevation) and blends into and complements the drainage pattern and topography of the surrounding terrain.

(d) *"Area of operations"* means that area of the leased or licensed lands which is required for exploration, development, producing, and processing operations, including all related surface structures and facilities, and which is delineated on a map or plat that is made a part of the approved exploration or mining plan.

(e) *"Authorized officer"* means any officer designated by any Federal surface managing agency to exercise its authority in matters relating to coal leases and licenses and to the provisions of this Subpart.

(f) *"Coal"* includes coal of all ranks from lignite to anthracite.

(g) *"Compaction"* means the reduction of porous spaces among the particles of soil and rock generally caused by running heavy equipment over the earth materials, as in the process of leveling the overburden material on strip mine spoil piles or banks, for the purpose of increasing the bearing capacity and stability of the earth materials.

(h) *"Contemporaneously as practicable"* means with respect to reclamation of mined or otherwise disturbed areas, the commencement, conduct and completion of reclamation activity as soon after disturbance as possible, without undue physical interference with ongoing operations, leaving a minimum of land unreclaimed, consistent with the objectives of environmental protection set forth in this Subpart.

(i) *"Daylighting"* is a term used to define the surface mining procedure for exposing an underground mined area to remove remaining coal.

(j) *"Director"* means the Director of the Bureau of Land Management, U.S. Department of the Interior.

(k) *"Exploration"* means the detailed investigation and acquisition of data pertaining to a mineral deposit, including activities for identifying regions or specific areas in which deposits are most likely to occur, and activities used to establish the nature of a coal deposit preparatory to mining.

(l) *"Exploration plan"* means a detailed plan submitted to the Mining Supervisor for approval before exploration operations commence showing the location and type of exploration work to be conducted, environmental protection procedures, roads, and reclamation procedures to be followed upon completion of such operations.

(m) *"General Coal Mining Order"* means a formal numbered order issued by the Mining Supervisor, with the prior approval of the Division Chief, and published, after opportunity for public comment, in the FEDERAL REGISTER, which implements the regulations in this Part and applies to coal mining and related operations in a specified geographic area.

(n) *"Impoundment"* means an artificially built, dammed, or excavated place for the retention of water or sediments. A permanent impoundment is one that is intended to remain after final abandonment of the operation, and shall be identified as such in approved plan.

(o) *"Leased lands, leased premises, or leased tract"* means lands embraced within a coal lease and subject to the regulations in this Subpart.

(p) *"Lessee"* means any person or persons, partnership, association, corporation, public body or governmental entity to whom a coal lease is issued, subject to the regulations in this Subpart, or an assignee of such lease under an approved assignment.

(q) *"Licensee"* means any individual, association or individuals, or municipality to whom a coal license is issued pursuant to the provisions of Section 208 of Title 30 of the United States Code, or any person, association, corporation, public body or governmental entity to whom an exploration license is granted under section 201(b) of Title 30 of the United States Code.

(r) *"Logical mining unit"* means an area of land designated as such by the Geological Survey pursuant to applicable Departmental regulations.

(s) *"Methods of operation"* means the method and manner by which any activities are performed by the operator, as described in an exploration or mining plan.

(t) *"Mine"* means an underground or surface excavation and the surface or underground support facilities that contribute directly or indirectly to coal mining, preparation, and handling.

(u) *"Mining plan"* means a detailed plan for development of the coal resource submitted to the Mining Supervisor for approval prior to commencement of any mining operation, showing the proposed location, method, and extent of mining and all related activities necessary and incidental to such operation, including steps to be taken to reclaim disturbed areas, to mitigate adverse impacts, and to otherwise meet the performance standards and requirements set forth in this Subpart.

(v) *"Mining Supervisor"* means the Area Mining Supervisor, Conservation Division, Geological Survey, or District Mining Supervisor or other subordinate acting under his direction.

(w) *"Notice of Availability"* means a formal notification, by the appropriate Federal officer, to appropriate Federal, state and local agencies and interested individuals or groups of individuals, of the availability for inspection of information, data, proposed plans or modifications thereof, pending decisions and other documents subject to such notice. Any such notice shall include the nature of the information, data, plan or modification, decision or other document involved; the name and mailing address of any applicant; the nature, location (county, township, range and section), duration and brief description of any proposed operations; the date upon which any proposed action might be taken; and, when appropriate, a specific time limit for public review, comment or request for any departmental action, including the holding of any public meeting. For the purpose of ensuring appropriate distribution of such notices, there shall be maintained at each office of a Mining Supervisor or authorized officer of the Department of the Interior a mailing list which shall consist of the names and mailing addresses of all appropriate Federal, state or local agencies and any individuals or groups of individuals who have requested in writing to be included on such lists. All notices of availability shall be mailed to such agencies, individuals or groups at the addresses indicated on such lists.

(x) *"Notice of noncompliance"* means a written notice of operator noncompliance issued pursuant to Section 211.72 of 30 CFR Part 211.

(y) *"Operator"* means a lessee or licensee, or one conducting operations on lands under the authority of the lessee or licensee.

(z) *"Overburden"* means the earth, soil, rock, and other natural materials which lie above the coal being mined.

(aa) *"Permanent abandonment"* means the cessation of exploration or mining or other operations set forth in an approved plan on all or any portion of lands covered by a lease or license and subject to the provisions of this Subpart, where it is the intent of the operator not to continue operations at the mine or portion thereof.

(bb) [Omitted].

(cc) [Omitted].

(dd) *"Pollution"* means man-made or man-induced adverse alteration of the

chemical, physical, biological, and radiological integrity of land, water or air, which reduces, or has the potential of reducing the beneficial uses of these resources.

(ee) *"Post mining land use"* means that use which will be made of affected lands after mining and reclamation is completed and which is specified in a mining or exploration plan approved pursuant to 30 CFR 211.

(ff) *"Preliminary data"* means data, consisting of maps and text, submitted by an applicant for a lease or license to the authorized officer of the BLM, which describes the applicant's proposal in the detail necessary to allow the authorized officer to conduct a technical examination and environmental analysis as described in § 3041.2.

(gg) *"Preparation"* means any crushing, sizing, cleaning, drying, mixing or other processing of coal to prepare it for market which is conducted on lands subject to this Subpart.

(hh) *"Reclamation"* means the process of returning affected lands to a stable condition and form consistent with their premining productivity and use, or other approved post mining land use.

(ii) *"Road"* means any open way for passage or travel upon which to transport people, equipment, materials, or coal, which is constructed, improved or maintained by the operator and which is used to service the pit, bench, underground mine workings, loading facilities or exploration activities.

(jj) *"Secretary"* means the Secretary of the Interior.

(kk) *"Significant vegetation"* means farm crops, including grasses and forbs, that are integral parts of agriculture or ranching operations and the natural vegetation of forests or meadows with significant recreational, watershed, agricultural, or wildlife habitat value.

(ll) *"Spoil"* means soil, rock, and other earth materials that are broken, moved, dumped, or otherwise significantly disturbed during surface coal mining operations subject to this Subpart.

(mm) *"Subsidence"* means a lowering of surface elevations over an underground mine caused by loss of support and subsequent caving of strata lying above the mine.

(nn) *"Surface owner"* means an entryman, or a person or persons who hold legal title to the land surface.

(oo) *"Topsoil"* means natural earth materials at or vertically adjacent to the land surface with physical and chemical characteristics suitable for support of vegetation.

(pp) *"Valley floors"* means the channelways, floodplains, and adjacent low terraces of streams that are flooded during periods of high flow and that are underlain by unconsolidated stream-laid deposits. Excluded are higher terraces and slopes underlain by colluvial and other surficial deposits normally occurring along valley margins.

(qq) *"Waste"* means solid or liquid refuse, rubbish, or other valueless material which is produced by or in connection with coal mining operations, including exploration, production, development, preparation and other related activities, and which has no useful purpose in connection with any remaining operations.

§ 3041.0–7 Applicability.

(a) This Subpart sets forth regulations governing reclamation standards, use of surface, bond requirements, and reports relating to leases and licenses issued by the BLM with respect to Federal coal deposits located on public domain and acquired lands of the United States and reserved Federal coal deposits underlying lands the surface of which is privately owned. These regulations do not govern the leasing or development of coal deposits owned by Indians and subject to the Trust protection of the United States, which are controlled by regulations found in 25 CFR Chapter 1.

(b) The provisions of this Subpart shall become effective upon May 17, 1976 except as hereinafter provided.

(1) Existing operations.

(i) On and after 180 days from the effective date of this Subpart, the provisions of § 3041.2–2(f) shall apply to all existing operations with respect to lands from which the overburden has not previously been removed, provided, however, that this subparagraph shall not be deemed or construed so as to apply the requirements of subparagraphs 3041.2–2(f) (1) and (2), hereof to any operation for which a mining plan has been approved on or before the effective date of this Subpart and for which a variance pursuant to the provisions of subparagraph 3041.2–2(f)(2) would be required.

(ii) On or before 18 months from the effective date of this Subpart, the operator of each existing operation shall have submitted and shall have obtained the approval of a plan or modification thereof which shall comply with all applicable provisions of this Subpart, provided, however, that if the Director of the GS determines that a proposed new plan or modification of an existing plan was prepared and submitted in timely fashion, taking into account the complexity of the operation and of the plan or modification involved, but that administrative delay thereafter has prevented approval within the time specified, the time for compliance with this paragraph may be extended by order of the Director of the GS for an amount of time equal to the duration of such delay.

(iii) For the purpose of this paragraph, the term "existing operation" shall mean:

(A) All operations for which a plan has been approved on or before the effective date of this Subpart, and

(B) All operations with respect to which a proposed plan has been submitted to the Department on or before the effective date of this Subpart, and with respect to which proposed plan the Department has on that date either completed its environmental assessment and determined that no environmental statement under Section 102(2)(C) of the National Environmental Policy Act is necessary, or has determined that such a statement is necessary and has commenced, and expended substantial resources of the Department in the preparation or completion of, such a statement.

(iv) On or before 90 days from the effective date of this Subpart, the Director of the Geological Survey shall review all proposed plans which have been submitted to the Department on or before the effective date of this Subpart and, after consultation with appropriate Federal surface managing agencies, publish in the FEDERAL REGISTER a list which shall identify each such proposed plan and whether it will be considered to cover an existing operation.

(2) All operations or proposed operations not included in the definition of "existing operation" in the preceding paragraph shall be considered to be new operations, and shall be subject to the provisions of this Subpart upon the effective date hereof.

(3) The provisions of § 3041.7(c) of this Subpart shall apply immediately upon the effective date of this Subpart.

(c) To the maximum extent possible, all environmental statements and all approvals of plans covering existing operations which are pending before the Department on the effective date of this Subpart shall take into account and shall reflect and implement the provisions and purposes hereof; provided, however, that nothing in this subparagraph shall be construed to relieve any operator of the obligation imposed by subparagraph (b)(1)(i) of this section.

(d) Nothing in this Subpart shall be deemed or construed as increasing or diminishing any rights not in conflict with Federal law held by any person, including any surface owner or entryman, arising under the laws of any State and relating to the giving or withholding of consent to, or consultation in connection with, entry to any land for the purpose of conducting operations subject to this Subpart.

§ 3041.1 Use of surface.

(a) The operator shall be entitled to use only so much of the surface of the lands subject to a lease or license as is deemed necessary and has been designated in an approved plan. This Subpart shall not be construed to authorize any use of the Federal lands for a power generation plant or a commercial or industrial facility. Separate permits for such uses must be obtained from the appropriate agency. The operator shall not be entitled to use any mineral materials subject to the Materials Act except as provided by Part 3600 of this Chapter.

(b) Operations conducted in connection with other authorized uses on the same lands shall not unreasonably interfere with or endanger operations conducted in connection with uses authorized under this Chapter, nor shall operations authorized and conducted pursuant to this Chapter unreasonably interfere with or endanger operations under any lease, permit, license, or other use authorized pursuant to the provisions of any other Act.

§ 3041.2 Technical examination/environmental assessment.

The appropriate authorized officer, with the assistance of the Mining Supervisor, shall make a technical examination and environmental assessment of the area covered by a competitive coal lease application or on Bureau motion, pursuant to the provisions of this section.

(a) The technical examination shall include:

(1) An examination of the technical aspects of the proposed operations set forth in any preliminary data and information; and

(2) An evaluation of the impacts of such operations or, if on BLM motion, the effect of coal leasing and development, on other land uses, resources, or land management programs on or adjacent to the area.

(b) The environmental assessment shall include an analysis of the impact of the proposed operations set forth in any preliminary data and information and of alternatives thereto, or, if on BLM motion, the impacts of coal leasing and development on the living and nonliving components of the environment.

§ 3041.2–1 Technical examination/environmental assessment report.

(a) Following completion of the technical examination and environmental assessment described in the preceding Section, the authorized officer shall prepare a report which sets forth recommendations as to (1) land which should be excluded from any lease or license in order to avoid mining where reclamation is not attainable or assured, or in recognition of other exclusive land use management priorities; (2) measures required to comply with the reclamation and performance standards set forth in this Subpart; (3) necessary conditions and amounts of bonds to cover estimated reclamation costs for areas that will be disturbed during the initial 5-year period of the lease, permit, of license; (4) any additional, more stringent requirements needed in the lease or license pursuant to § 3041.1(e) of this Subpart.

(b) If it is recommended that a specific area within the applied for lands be excluded from a lease or license, or modification thereof, the report shall set forth with reasonable specificity the facts upon which such recommendation is based.

§ 3041.2–2 Obligations and standards of performance.

(a) Any operator who accepts a coal lease or license shall comply with, and be bound by, the general obligations and standards of performance set forth in this section and such additional and more stringent specific requirements as may be contained in the terms and conditions of such lease or license.

(b) If the appropriate authorized officer of the BLM determines that an approved exploration or mining plan should be required to be revised or supplemented to adjust to changed conditions or to correct oversights, he may propose such revision or supplement to the Mining Supervisor for action pursuant to the provisions of 30 CFR Part 211 relating to changes in plans.

(c) Surface coal mining operations shall be conducted so as to assure the extraction of the coal resource to the maximum extent possible, taking into account existing technology, commercially available equipment, the cost of production, and the quality and quantity of the coal resource, so that future environmental disturbance through the resumption of mining will be minimized.

(d) The operator shall, in accordance with the terms and conditions of the lease or license (1) take visual resources identified by the Federal surface managing agency into account in the planning, design, location, and construction of facilities on the affected lands; and (2) take such action as may be needed to minimize, control, or prevent damage to the recreational, cultural, scientific, historical and known or suspected archeological and paleontological values of the land contained therein.

(e) The following performance standards shall be applicable to the surface effects of underground mining.

(1) Each operator of an underground coal mine shall adopt measures consistent with feasible known technology in order to prevent or, in those instances where the mining method used requires planned subsidence in a predictable and controlled manner, control subsidence; maximize mine stability; and maintain the value and use of surface lands.

(2) Where pillars or panels are not removed and controlled subsidence is not part of the mining plan, pillars or panels of adequate dimensions shall be left to assure stability giving due consideration of the thickness and strength characteristics of the coal beds and of the strata above and immediately below the coal bed.

(f) The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations on the surface of lands subject to this Subpart except as otherwise provided by the action of the Secretary under 30 CFR 211.75(a):

(1) The operator shall reclaim affected lands pursuant to his approved plan, as contemporaneously as practicable with operations, to a condition capable of supporting all practicable uses which such lands were capable of supporting immediately prior to any exploration or mining, or equal or better uses that have been approved in accordance with this Subpart.

(2) The operator shall replace overburden and waste materials in the mined area by backfilling (compacting, where necessary, to ensure stability or to prevent leaching of toxic materials), grading or other means, so as to cover all acid-forming or other toxic materials and eliminate highwalls and spoil piles and restore the approximate original contour. Where the thickness of the coal deposits relative to the volume of overburden is large and where the overburden and other spoil and waste materials are either insufficient or more than sufficient to restore the approximate original contour, the operator shall, in order to provide adequate drainage, backfill, grade, and where necessary, compact, using all available overburden or spoil material, to obtain the lowest practicable grade, which shall in any event be less than the angle of repose. Excess overburden or other spoil material shall be fully reclaimed in accordance with the requirements of this Subpart. Variance from the requirements of subparagraphs (1) and (2) of this paragraph may be allowed in an approved mining plan if the Director of the Geological Survey, with the concurrence of the Director of the Bureau of Land Management or the comparable appropriate authorized officer, determines that unusual physical conditions at the site, such as steeply dipping coal beds or multiple seam mining, exist, and such conditions make backfilling pursuant to such requirements impracticable as a result of the volume of material excavated or environmentally undesirable as a result of the duration of the operation.

(3) The operator shall stabilize and protect all surface areas, including spoil piles, affected by the coal mining and reclamation operation, to effectively control slides, erosion, subsidence, and attendant air and water pollution.

(4) The operator shall remove topsoil separately, for replacement on the backfill area, and if not so utilized immediately, segregate it in a separate pile from other spoil. When topsoil is not to be replaced on a backfill area within a time short enough to avoid deterioration, the operator shall establish and maintain an approved quick growing vegetative cover or employ other approved measures so that the topsoil is protected from wind and water erosion and establishment of noxious plant species, and is in a condition for sustaining vegetation when used during reclamation. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation, and if other excavated materials can be shown to be more suitable for revegetation, then the operator may be authorized in the approved plan to remove, segregate, protect, and utilize in a like manner such other materials.

(5) The operator shall ensure that water impoundments, water retention facilities, dams, or settling ponds have been set forth in an approved plan, and ensure that:

(i) Any such facility is adequate for its intended purposes and the quality and quantity of impounded water will be suitable for its intended use.

(ii) Any such facility is designed, located, built, used, and maintained in accordance with sound engineering standards and practices and applicable Federal and State laws and regulations, to ensure that such facilities will have necessary stability with an adequate margin of safety.

(iii) Final grading will provide adequate safety and access for proposed or reasonably anticipated water users.

(iv) Such facilities will not have a significant adverse impact on the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(v) No mine or processing waste is used in the construction of such facilities unless authorized in the approved plan.

(6) The operator shall cover or plug all auger mine holes with noncombustible and, where necessary to minimize control or prevent harmful drainage, impervious material.

(7) The operator shall utilize the best practicable commercially available technology to minimize, control or prevent disturbances of the prevailing quality, quantity and flow of water in surface and ground water systems, and of the prevailing erosion and deposition conditions at the mine site and in affected offsite areas, both during and after coal mining operations and reclamation, by:

(i) Controlling acid or toxic drainage and the adverse consequences thereof by such measures as, but not limited to, diverting surface runoff water away from disturbed areas; excluding oxygen from, or restricting the flow of water through acid or toxic-producing minerals; treating drainage to reduce acid or toxic content which adversely affects downstream water upon being released to water courses; and casing, sealing, or otherwise treating drill holes, shafts, and wells to keep acid or toxic drainage from entering ground and surface waters.

(ii) Conducting surface mining operations so as to minimize, control, or prevent (A) contributions of suspended solids to streamflow or runoff outside the mining site above natural levels under seasonal flow conditions as measured for a period and at sites determined by the Mining Supervisor, in consultation with the appropriate authorized officer, and (B) except where specifically authorized in an approved plan, deepening or enlarging of stream channels where operations include the discharge of water from mines.

(iii) Removing or modifying siltation structures after disturbed areas are revegetated and stabilized unless otherwise authorized by the Mining Supervisor in an approved plan, with the concurrence of the appropriate authorized officer, provided, however, that any siltation structure retaining water shall, in any event, be subject to the requirements of § 3041.-2-2(f)(5) of this Subpart.

(iv) Protecting the quality, quantity and flow, including depth of flow, of upstream and downstream surface and ground water resources of those valley floors which provide water sources that support significant vegetation or supply significant quantities of water for other purposes, by such measures as, but not limited to, relocating and maintaining the gradients of stream, avoiding mining installing, reestablishing or replacing aquifers or acquicludes, and replacing soils, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(8) The operator shall: (i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control or prevent air and water pollution and the hazards of ignition and combustion.

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control or prevent air and water pollution and hazards of ignition and combustion. Where surface disposal of solid wastes in areas other than the mine workings or other excavations has been authorized in the approved plan, stabilize such waste including, where necessary, constructing waste piles in compacted layers with the use of incombustible and impervious materials; shape waste piles to be compatible with the natural surroundings and terrain; cover with topsoil or other suitable material in accordance with subparagraph (f)(4) of this section; and revegetate in accordance with subparagraph (f)(13) of this section. All impoundments of liquid wastes shall comply with the requirements of subparagraph (f)(5) of this Section. Waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall be stored separately.

(9) Except as provided herein, the operator shall not conduct excavation, drilling, or blasting operations within 200 feet of an active or abandoned underground mine. Where it can be established by certified maps or inspection of such an underground mine that such activities may be conducted without danger of interference with, or penetration of, an underground mine, they may be authorized in an approved plan to be conducted up to but not less than 25 feet from such underground mine provided that nothing in this paragraph shall preclude daylighting or similar surface coal mining activities intended to improve resource recovery, abate water pollution, or eliminate public hazards resulting from such underground mines.

(10) To prevent personal injury or damage to public and private property, the operator shall use explosives only in accordance with all applicable Federal and State laws and an approved plan and shall:

(i) Provide adequate advance written notice, by publication and/or posting of planned blasting schedules, to local governments and to residents who might be affected by the use of such explosives, and maintain a log of the magnitudes and times of blasts for a period of at least two years.

(ii) Limit the size, timing, and frequency of blasts, as determined by the physical conditions of the site.

(11) The operator shall design to applicable standards, construct, maintain and, when no longer necessary and unless otherwise authorized in an approved plan, remove, all roads, pipelines, powerlines and similar utility access facilities and associated bridges, culverts and ditches, into and across the site of operations, in a manner that will minimize control or prevent erosion and siltation, fugitive dust, pollution of water, damage to fish or wildlife or their habitat and public or public property.

(12) (i) Roads shall not be surfaced with any acid or toxic producing material. No access roads will be constructed unless (A) the operator shall have first submitted a surveyed profile accompanied by typical cross-sections of the road and ditches, showing pipe, entrance, exit channels and sediment control structures and other structures or configurations to be used on the road to meet performance standards and (B) the location shall have been marked and inspected, and approved by the Mining Supervisor, in consultation with the appropriate authorized officer and the surface owner, if other than the United States.

(ii) No access road shall be constructed in a stream, nor shall any stream or stream bed be used as an access road. Insofar as possible, all roads shall be located on benches, ridges, and flatter slopes to enhance stability and minimize disturbance. Stream fordings shall be avoided and the normal seasonal flow and the normal seasonal sediment load shall not be detrimentally affected by access roads in a continuous fashion that results in harm to the aquatic ecosystem. Provided, however, that nothing in this subparagraph shall be construed to prohibit relocation or alteration of such beds or channels pursuant to the provisions of this Subpart and as set forth in an approved plan.

(iii) For the purpose of paragraph (f)(12)(1) of this section, "access roads" shall not include temporary roads constructed within a working pit for the purpose of use by equipment and personnel for access to the coal being mined.

(13) (i) The operator shall, except where other reclamation based upon post-mining land use and not requiring revegetation pursuant to the requirements of this section is expressly provided for in an approved plan, establish on regarded areas and all other affected lands a diverse vegetative cover, native to the area and capable of regeneration and plan succession at least equal in density and permanence to the natural vegetation provided, however, that the Mining Supervisor, with the concurrence of the appropriate authorized officer may allow the use of approved mixtures of introduced or native species where preferable to achieve quick cover or assure successful revegetation. In approving such mixture, preference will be given to non-toxious species.

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that successful revegetation in compliance with subparagraph (i) of this subsection has occurred, provided, however, that this period shall extend for

a minimum of five full years after the first planting, and for a total period of liability not to exceed 10 years from the original planting; and further provided that,

(A) Where the appropriate officer, in consultation with the Mining Supervisor, determines that natural conditions such as annual precipitation, soil characteristics and native vegetation are stable and favor rapid revegetation, and that revegetation pursuant to subparagraph (i) of this subsection is likely to occur before the expiration of such minimum period, he may specify in the lease, permit, or license that such minimum period will not apply with respect to some or all of the lands included in such lease, permit or license; and

(B) Where during any such minimum period such authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Mining Supervisor that the liability of the operator be extended for a period of up to five years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(iii) During the relevant period of liability, the Mining Supervisor and the appropriate authorized officer shall jointly inspect and evaluate the revegetated areas pursuant to subparagraph 3041.6 (b) (2) hereof.

(14) The operator shall: (i) Except as provided in subparagraph (ii) hereof, allow public access to and upon Federal lands subject to his lease, permit, or license for all lawful and proper purposes, except where such access would unduly interfere with his authorized use.

(ii) Regulate public access, vehicular traffic, and wildlife or livestock grazing in all areas of active operations, including lands undergoing reclamation, in order to protect the public, wildlife and livestock from hazards associated with such operations, and to protect revegetated areas from unplanned and uncontrolled grazing. For this purpose, the operator shall provide warning signs, fencing, flagmen, barricades, and other safety and protective measures as may be necessary.

(15) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidential ignition. If a coal seam exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited during the term of a lease, the operator shall immediately take all necessary steps to extinguish the fire.

(16) Upon completion or temporary or permanent abandonment of mining operations in all or any part of a strip pit, the face of the coal shall be covered with noncombustible material that will effectively protect the coal bed from becoming ignited.

(17) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Mining Supervisor, in an approved plan.

§ 3041.3 Compliance or performance bond.

(a) The provisions of Subpart 3504 of this Chapter are hereby made applicable to this subpart. In addition each compliance bond will be conditioned upon faithful compliance with the regulations in this subpart and any additional terms and conditions of the lease or license.

(b) Prior to issuing a lease or license, the authorized officer, after consultation with the Mining Supervisor, shall ensure that the amount of the compliance bond or bonds to be furnished is sufficient to ensure reclamation in accordance with the performance and reclamation standards in § 3041.2-2, and with the terms and conditions of the lease or license.

(c) An application for a lease or license may be denied any applicant or offeror who has previously forfeited a bond because of failure to comply with an approved plan unless the affected lands covered by such plan have been reclaimed without cost to the Federal Government. Nothing in this subparagraph shall be deemed to modify or limit any discretionary authority of the authorized officer of the BLM otherwise to deny for cause any application for a lease or license.

(d) Once a lease or license has been issued the authorized officer, after consulting with and receiving the recommendation to increase or to release in whole or in part any compliance bond or bonds so that the amount of the compliance bond or bonds will at all times be sufficient to cover the estimated costs of completion of the remaining reclamation requirements of the approved plan and of the terms and conditions of the lease or license.

§ 3041.4 Procedures and public participation.

Written findings. Except as may be otherwise expressly set forth in this Subpart, decisions and determinations of any appropriate authorized officer acting pursuant to this Subpart or to 30 CFR Part 211 with respect to issuance of leases, approval of mining plans or modifications thereof, and abandonment of operations shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such officer.

§ 3041.5 Completion of operations and abandonment.

(a) *Grading and backfilling.* Upon completion of backfilling and grading as required by the approved plan and prior to replacing topsoil and revegetation, the operator shall submit a report thereon, in duplicate, to the Mining Supervisor and request inspection for approval. Whenever it is determined by such inspection that the backfilling and grading has met the requirements of the approved plan, the Mining Supervisor shall recommend to the appropriate authorized officer release of an appropriate amount of the compliance bond for the area satisfactorily backfilled and graded.

(b) *Temporary abandonment.* In areas in which there are no current operations, but operations are to be resumed under an approved plan, the operator shall substantially backfill, fence, protect, or otherwise effectively close all surface openings, auger holes, areas prone to subsidence, and surface facilities or workings which are a hazard to people or animals. Conspicuous signs shall be posted prohibiting entrance of unauthorized persons. All such protective measures shall be maintained in a secure condition until such operations are resumed or permanently abandoned.

(c) *Permanent abandonment.* Before permanent abandonment of exploration or mining operations, all openings and excavations, including water discharge points, shall be closed or backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration, development or prospecting shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water. Methods of abandonment shall be approved in advance by the Mining Supervisor in an approved plan, and may include backfilling, regrading, revegetation, cementing, and capped casing, or combinations of these, or other methods. Reclamation and clean-up of surface areas around and near permanently abandoned underground or surface mines, including, except where otherwise expressly provided in an approved plan, removal of equipment and structures related to the mining operation, shall commence without delay following cessation of mining operations. Areas affected by access roads will be graded, drained, and revegetated in accordance with the approved Mining Plan and therein approved post mining land use prior to bond release. In the event that access or haul roads are intended to remain after abandonment of the operation, pursuant to § 3041.2-2(f) (11) of this Subpart, they must be designed and constructed so as to be permanently stabilized using adequate drains, water barriers, and other practices.

(d) *Notice of abandonments release of bond.* (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall submit to the Mining Supervisor, in duplicate, a notice of his intention to cease or abandon operations, together with a statement of the exact number of acres affected by his operations, the extent and kind of reclamation accomplished, and a statement as to the structures and other facilities that are to be removed from or remain on the leased or licensed lands.

(2) Upon receipt of such notice, the Mining Supervisor and the appropriate authorized officer or officers shall promptly make a joint inspection to determine whether all operations have been completed in accordance with the terms and conditions of all leases, permits, and licenses, and with the requirements of approved operating plan. Where the operator has compiled with all such terms, conditions and requirements and the regulations of this Subpart the Mining Supervisor shall recommend to the appropriate authorized officer that the appropriate period of bonded liability be terminated.

(3) When the surface of lands in a lease permit or license is not owned by the United States the Mining Supervisor shall notify the surface owner and solicit and take into account his comments before recommending to the appropriate authorized officer that the period of such bond liability be terminated.

§ 3041.6 Reports.

(a) *Operations.* The operator shall file with the Mining Supervisor within 30 days after the end of each calendar year, and within 30 days after any temporary or permanent abandonment of operations, a report, in duplicate, containing the following with respect to his operations or the operations subject to such abandonment.

(1) Serial number of the lease, permit, or license and a description of the lands affected by operations.

(2) The number of acres disturbed and the number of acres reclaimed, including areas on which revegetation is being conducted.

(3) A description of the reclamation work remaining to be done on lands disturbed.

(b) *Revegetation.* (1) The operator shall file a report, in duplicate with the Mining Supervisor within 30 days after each planting is completed. The report shall: (i) Identify the lease or license; (ii) Show the types of planting or seeding, including mixtures and amounts; (iii) Show the date of planting or seeding; (iv) Identify or describe the planted or seeded lands; (v) Describe any surface manipulation, mulching, fertilization, and irrigation procedures, if any, and contain such other information as may be considered relevant.

(2) The Mining Supervisor and the authorized officer of the Federal surface managing agency shall, as soon as possible after each full growing season, jointly inspect and evaluate the revegetated areas to determine, in consultation with the surface owned if other than the United States, whether satisfactory vegetative growth has been established, or whether additional revegetation efforts should be ordered pursuant to 30 CFR 211.62(b)(2).

§ 3041.7 Notice of noncompliance: Revocation.

(a) The appropriate authorized officer and the Mining Supervisor shall have the right to enter upon the lands subject to this Subpart under lease or license, at any reasonable time.

(b) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a least or license, applicable regulations, or an approved plan and such activities do not threaten immediate and serious damage to the environment, resources, or the health and safety of the public, such authorized officer shall or, in the case of an appropriate authorized officer of any Federal surface managing agency not in the Department of the Interior, may refer the matter to the Mining Supervisor for remedial action pursuant to 30 CFR 211.72(a).

(c) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a lease or license, applicable regulations or an approved plan and such activities threaten immediate and serious damage to the environment, resources, or the health and safety of the public, and the Mining Supervisor is not available for appropriate remedial action pursuant to 30 CFR 211.72(c), such authorized officer may order the immediate cessation of such activities and shall promptly notify the Mining Supervisor. Upon such notification, the Mining Supervisor shall order immediate remedial action pursuant to 30 CFR 211.72(c).

(d) Failure of the operator to take action in accordance with an order for cessation of activities issued pursuant to paragraph (c) of this section, or with a written notice of noncompliance issued by the Mining Supervisor in accordance with the provisions of 30 CFR 211.72 shall be grounds for suspension of the operation and for possible cancellation of the lease, permit, or license in accordance with the regulations in 43 CFR 3500 of this Chapter.

§ 3041.8 Variances.

(a) Variances from compliance with the performance standards set forth in this subpart may be allowed as part of an approved mining plan under either of the following circumstances:

(1) Where an applicant states in a proposed plan or modification thereof that he cannot meet a performance standard specified in subparagraphs 3041.2-2(f) (2), (4), (6), (11), (12) or (13) of this subpart, he may request a variance from such performance standard where such variance would be compatible with the approved post mining land use, and shall support his request with appropriate information demonstrating the need therefor. The Mining Supervisor, after consultation with the appropriate authorized officer and the surface owner, if other than the United States, may approve or disapprove such variance, and shall advise the applicant and approve or disapprove the proposed plan or modification accordingly;

(2) Where an applicant proposes a post-mining land use that is substantially different from the land use immediately prior to any exploration and mining, the Mining Supervisor, with the concurrence of the appropriate authorized officer and after consultation with the surface owner, if other than the United States, may approve a mining plan containing variances from the performance standards of 30 CFR 211 and § 3041.2-2(f) hereof, provided that:

(A) After consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining use.

(B) The granting of such variance is essential to achieving the proposed post mining land use.

(C) The applicant presents specific plans for the proposed post mining land use and appropriate assurances that such use will be: (i) Compatible with adjacent land uses; (ii) Supported by commitments and assured of investment from public agencies where appropriate; (iii) Practicable with respect to private financial capability for completion of the proposed development; (iv) Planned pursuant to a schedule made part of the proposed mining plan so as to integrate the mining operation and reclamation with the post mining land use; (v) Designed by qualified personnel in conformance with professional standards in order to assure the stability, drainage, and configuration necessary for the intended use of the site.

(D) To the degree possible and taking into account the subjective nature of the assessment, the applicant has considered the impact of the proposed land use on the aesthetic character of the area by consulting with inhabitants of the area, and utilizing expertise in the landscape and geomorphologic fields.

(b) Any application for a variance pursuant to paragraph (a) of this section shall demonstrate that any proposed disturbance of land above a highwall will facilitate compliance with the environmental protection and performance standards set forth in this subpart.

(c) Any application for variance pursuant to paragraph (a) of this section which proposes to place spoil or other material on the downslope below the bench used to mine an area classed as "steep slope," shall demonstrate to the satisfaction of Mining Supervisor that the permanent or temporary sediment loads in the receiving drainages and reclamation to the post-mining land use will not have significant adverse effects upon the aesthetics of the area.

(d) All variances granted pursuant to this section shall be reviewed by the Mining Supervisor and the appropriate authorized officer not more than three years after granting of the variance and incorporation in the mining plan, to ensure that the development is proceeding in accordance with the terms of the approved plan and the terms and conditions of any lease, permit, or license.

(e) An operator may apply for a variance pursuant to the provisions of paragraph (a) of this section only by submitting a new or revised mining plan to the Mining Supervisor for approval pur-

suant to the provisions of 30 CFR 211. Minor changes of operations which do not involve violations of the performance standards set forth in this subpart, and the granting of a variance pursuant to the description in § 3041.2-2(a)(2) of this subpart, will not be deemed to be subject to or require compliance with, the provisions of this section.

(f) If the Director of the GS determines that a decision to grant a variance would constitute a major Federal action significantly affecting the quality of the human environment, and that an environmental impact statement as required by Section 102(2)(C) of the National Environmental Policy Act has not been prepared with respect thereto, such a statement shall be prepared. If the Mining Supervisor grants a variance pursuant to this Section, he shall notify the appropriate land managing agency or land planning agency for the purpose of determining whether any changes may, as a result of such variance, be required in any land use plan.

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS: GENERAL

2. Section 3500.0-5 of 43 CFR is amended by revising paragraphs (h) and (i) as follows:

§ 3500.0-5 Definitions.

* * * * *

(h) *Public Bodies.* Public bodies are Federal and State agencies, municipalities, and rural electric cooperatives and similar types of organizations, and nonprofit corporations controlled by any of foregoing entities.

(i) *Government entities.* Governmental entities are Federal and State agencies, municipalities and subdivisions thereof, including any corporation primarily acting as an agency or instrumentality of a State, which produces electrical energy for sale to the public.

3. 43 CFR 3501.1-4 paragraphs (b)(1)(i) and (ii) are revised to read as follows:

§ 3501.1-4 Acreage limitations.

* * * * *

(b) * * *

(1) *Coal.* (i) No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time Federal coal leases or permits on an aggregate of more than 46,080 acres in any one State, and in no case on an aggregate of more than 100,000 acres in the United States.

(ii) No person, association, or corporation holding, owning or controlling Federal coal leases or permits (by itself or through any subsidiary, affiliate, or person under common control with it) on an aggregate of more than 100,000 acres in the United States on August 4, 1976, shall be required to relinquish any lease or permit which it held on that date, but it shall not be permitted to take, hold, own or control any further Federal coal leases or permits until such time as its holding, ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand acres within the United States.

* * * * * *

4. 43 CFR 3501.1-5 is revised to read as follows:

§ 3501.1-5 Exceptions.

(a) *All leaseable minerals except coal.* No lands within the boundaries of the following areas in the public domain shall be leased under the provisions of this Part:

(1) National parks and monuments.

(2) Indian reservations.

(3) Incorporated cities, towns, and villages.

(4) Naval petroleum and oil shale reserves.

(5) Lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513-519) known as the Appalachian Forest Reserve Act, or other acquired lands.

(b) *Coal.* No coal leasing shall be permitted on the public domain within the areas set forth in 43 CFR 3535.4.

5. 43 CFR 3501.2-1 is revised to read as follows:

§ 3501.2 Acquired lands.

§ 3501.2-1 Lands and deposits not subject to leasing.

(a) *All leaseable minerals except coal.* The following acquired lands are not subject to leasing:

(1) Lands acquired for the development of their mineral deposits;

(2) Lands acquired by foreclosure or otherwise for resale;

(3) Lands acquired as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.);

(4) Lands in incorporated cities, towns, and villages;

(5) Lands in national parks and monuments; and

(6) Lands which are tide lands or submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

(7) Lands in Naval Petroleum Reserves, The National Petroleum Reserve in Alaska, and oil shale reserves.

(b) *Coal.* No coal leasing shall be permitted on acquired lands within the areas set forth in 43 CFR 3525.4.

6. 43 CFR 3502.9 is amended to read as follows:

§ 3502.9 Public Bodies.

§ 3502.9-1 Coal.

(a) To obtain a coal lease on a tract set aside pursuant to 30 U.S.C. 201(a) a public body must submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a lease or permit;

(3) Evidence that the action proposed has been duly authorized by its governing body; and

(4) A definite plan to produce energy solely for its own use or for sale to its members or customers (except for short-term sales to others).

(b) To obtain a license to mine coal pursuant to 30 U.S.C. 208, a municipality must submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a license; and

(3) Evidence that the action proposed has been duly authorized by its governing body.

(c) To obtain a coal lease pursuant to 30 U.S.C. 352 on a tract of acquired lands set apart for military or naval purposes, a governmental entity must submit:

(1) Evidence of the manner in which it is organized, including the state in which it is located;

(2) Evidence that it is authorized to hold a lease;

(3) Evidence that the action proposed has been duly authorized by its governing body; and

(4) Evidence that it is producing electricity for sale to the public in the state where the lands to be leased is located.

(d) Where the material required in paragraphs (a), (b) and (c) of this section has previously been filed, a reference by serial number of the record in which it has been filed, together with a statement as to any amendments, will be accepted.

7. 43 CFR Subpart 3503 is amended by adding a new § 3503.3-3 to read as follows:

§ 3503.3-3 Coal.

(a) A coal lease shall require payment of a royalty of not less than 12½ per centum of the value of the coal removed from a surface mine.

(b) A coal lease shall require payment of a royalty of not less than 8 per centum of the value of the coal removed from an underground mine, except that the authorized officer may determine a lesser amount if conditions warrant.

(c) The value of coal removed from a mine is defined for royalty purposes in 30 CFR 211.63.

8. 43 CFR § 3503.3-1(b) is amended by revising paragraph (1) to read as follows:

§ 3503.3-1 General statement rentals.

* * * * *

(b) *Leases*—(1) *Coal.* Annual rental per acre or fraction thereof for coal leases shall not be less than 25 cents for the first year, not less than 50 cents for the second through fifth years and not less than $_____ for each and every year thereafter during the continuance of the lease.

(i) *Leases issued before August 4, 1976.* The rental paid for any year shall be credited against the royalties for that year until the lease is readjusted.

(ii) *Leases issued or adjusted after August 4, 1976.* Rental payments may not be credited against royalties.

§§ 3505.1-1, 3505.2-1 through 3505.2-4 [Reserved]

9. 43 CFR Subpart 3505 is amended by revoking and reserving §§ 3505.1-1, 3505.2, 3505.2-1, 3505.2-2, 3505.2-3, and 3505.2-4.

§§ 3511.2–1 and 3511.2–2 [Amended]

10. 43 CFR Subpart 3511 is amended by revoking and reserving paragraph (b) (1) of § 3511.2–1(b)(1) and § 3511.2–2.

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

11. Section 3520.0–3 is revised as follows:

§ 3520.0–3 Authorities.

(a) *Public domain and acquired lands.* The Secretary is authorized to divide into leasing units and award leases of mineral lands and mineral deposits owned by the United States as set forth in § 3500.1–1 subject to the provisions of the Mineral Leasing Act, as amended and supplemented, and the Mineral Leasing Act for Acquired Lands as set forth in § 3500.0–3. Coal leasing is governed by the application procedures in 43 CFR Subpart 3525. Other leaseable minerals are covered by the procedures in 43 CFR Subpart 3521.

14. Section 3521.2–1 is revised as follows:

§ 3521.2–1 Application or Bureau motion.

(a) *Application.* (1) *Forms.* (i) Where filed and copies. An application for a lease must be filed in duplicate in the proper office. No specific form is required. Competitive-coal lease applications will be accepted only as authorized by 43 CFR Subpart 3525. The application should include the information set forth in (ii) to (v) of this subparagraph.

(ii) The applicant's name and address.

(iii) State of citizenship and qualifications.

(iv) A complete and accurate description of the lands for which the lease is desired. See § 3501.1–3.

(v) Evidence that the land is valuable for the mineral for which application is made, with a statement as to the character, extent and mode of occurrence of the deposit.

(2) *Additional Statements Required.* The contemplated investment for the development and purchase of equipment of a producing mine of a stated average daily output. Phosphate. To the extent such information is known to the applicant, a description of the phosphate and associated or related mineral deposits in the land based upon such actual examination as can be effected without an injury to the land or deposits (such examination shall not be deemed a trespass), giving nature and extent of the deposits; an outline in general terms of the proposed method of mining and processing the same; the proposed investment in mining operations thereon, and processing facilities therefor.

(3) Evidence showing in sufficient detail that:

(i) The amount of phosphate lands, Federal and non-Federal, held by him, together with the lands described in the application are necessary for his proposed development plan,

(ii) He intends to explore, mine and develop the property in good faith.

(iii) His proposed operations of the property will be in accordance with good conservation practice and this additional development is needed in order to supply an existing demand which cannot otherwise be reasonably met.

12. Section 3521.2–2 is revised as follows:

§ 3521.2–2 Qualifications.

(a) Compliance with Subpart 3502 is required.

(b) Bureau motion. (1) Bureau of Land Management responsibility.

(2) Geological Survey responsibility.

(c) *Leasing Units.* (1) *Phosphate.* If the authorized officer shall determine, after consultation with the Mining Supervisor of the Geological Survey that specific lands or deposits, not under an outstanding permit or application for preference right lease, which constitute an acceptable leasing unit are subject to phosphate lease, they will be offered for such lease on the terms and conditions to be specified in the notice of lease offer to the qualified person who offers the highest bonus by competitive bidding equal to the fair market value of the mineral deposit either at public auction or by sealed bids as provided in the notice of lease offer.

(2) *Solid (hardrock) minerals.* Any qualified person may file an application for the competitive offering of such deposits. Leasing units may not exceed, in reasonably compact form, 2,560 acres of land described in the manner required by this section. The authorized officer may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for a logical leasing unit.

(i) *Exception.* (a) *Phosphate.* In a notice for a phosphate lease, the detailed statement will set forth that the terms of minimum production will not be reduced or waived at the lessee's request as provided in § 3503.3–2(b)(3), (d), (e), or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss.

(b) *Asphalt.* All leases will be issued through competitive bidding only in the same manner as that provided for in Subpart 3120.

(c) *Publication.* Notice of offer of lands or deposits for lease by competitive bidding will be by publication once a week, or for such other period as may be deemed available, in a newspaper of general circulation in the county in which lands are situated.

13. The following sections are repealed and reserved: 43 CFR § 3520.0–4, 43 CFR § 3520.1–2, 43 CFR § 3520.1–3.

14. Title 43 CFR § 3520.2–1 is amended to read as follows:

§ 3520.2–1 Duration of Leases.

Leases shall be issued for indeterminate periods subject to readjustment or renewal at the end of the first 20-year period upon such terms and conditions as may be incorporated in each lease or prescribed in general regulations issued by the Secretary of the Interior, including covenants relative to mining methods, waste, period of preliminary development and minimum production (a) *Exceptions.* (1) *Asphalt.* Asphalt leases are issued for 10 years and so long thereafter as the lessee complies with the terms and conditions of the lease.

(2) *Solid (hardrock) minerals.* The lease will be issued for a period not exceeding 20 years the term to be determined upon the advice of the agency having jurisdiction over the surface and the U.S. Geological Survey.

(3) *Coal leases issued or readjusted after August 4, 1976.* The term of the lease shall be twenty years, and as long thereafter as the lessee is producing coal annually in commercial quantities.

§ 3524.1–1 [Reserved]

15. 43 CFR Subpart 3524 is amended by revoking and reserving § 3524.1–1.

16. 43 CFR 3524.2–1 is amended to read as follows:

§ 3524.2–1 Coal.

(a) *Application.* A lessee may obtain modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it would be in the interest of the United States to do so. In no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres or the same number of acres as that in the original lease, whichever is less. The lessee shall file his application for modification in duplicate in the proper land office, describing the additional lands desired, and the needs and reasons for and the advantage to the lessee of such modification.

(b) *Availability*—(1) *Noncompetitive.* Upon determination by the authorized officer that the modification is justified and that the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe.

(2) *Competitive.* If it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they will be offered as provided in Subpart 3525.

(c) *Terms and conditions.* The authorized officer shall require changes in the terms and conditions of the original lease to make them consistent with the modified lease. Before a lease is modified under paragraph (a) or (b) of this section, the lessee shall file his written acceptance of the conditions imposed in the modified lease and the written consent of the surety under the bond covering the original lease to the modification of the lease and to extension of the bond to cover the additional land.

17. Subpart 3525—Energy Minerals Activity Recommendation System (EMARS) is renumbered, reorganized, and corrected to read as follows:

Subpart 3525—Energy Minerals Activity Recommendation System (EMARS)

Subpart 3525—Energy Minerals Activity Recommendation System (EMARS)

3525.0–2 Objectives.

The objectives of the Department's coal leasing process called Energy Minerals Activity Recommendation System (EMARS), include: the orderly and timely development of federally-owned coal; appropriate uses of the resources; effective environmental protection; and a fair market return to the public for the resources sold. The program consists of three principal elements: nominations; multiple resource land-use planning; and environmental assessment. Nominations provide the first indication of tracts which should or should not be leased. The nominations received are then compared with resource values through the Bureau's land-use planning process, including Management Framework Plans. From these phases, proposed tract recommendations will be made and environmental assessment will be undertaken on the proposed coal lease tracts. The integration of these three elements, i.e., nominations, multiple resource land-use planning, and environmental assessment—each of which will be undertaken with State and public participation—will produce specific coal lease recommendations for Secretarial decision.

§ 3525.0–3 Authority.

(a) *Acts.* (1) The Act of February 25, 1920, 41 Stat. 437, as amended by the Act of June 3, 1948, 62 Stat. 248, the Act of September 9, 1959, 73 Stat. 490, the Act of August 31, 1964, 78 Stat. 710, and the Act of August 4, 1976, 90 Stat. 1083, 30 U.S.C. 201(a).

(2) The Act of August 7, 1947, 61 Stat. 913, and the Act of August 4, 1976, 90 Stat. 1090, 30 U.S.C. 352.

§ 3525.0–6 Policy.

It is the policy of the Department to encourage the development of Federally-owned coal, where such development is authorized, through a program that will provide for the protection, orderly development and conservation of Federal mineral and nonmineral resources in a manner that will avoid, minimize or correct adverse impacts on society and the environment resulting from coal development, without undue duplication or administrative delay by Federal officers. It is also the policy of the Department to issue leases for coal only where reclamation of the affected lands to the standards set forth in 43 CFR Part 3040 is attainable and assured and a reclamation program will be undertaken as contemporaneously as practicable with operations.

§ 3525.1 Competitive leases: Procedures.

(a) *Establishment of leasing tracts.* General coal land or deposits shall be divided into suitable leasing tracts and leased competitively. The Energy Minerals Activity Recommendation System (EMARS) shall be used to identify tracts suitable for leasing through nominations and multiple-use land management planning. All competitive lease sales, except those that qualify under the short-term leasing criteria, will be on Bureau motion.

(b) *Selection of proposed tracts.* (1) *Bureau Motion.* Proposed tracts will be selected by the Bureau of Land Management and United States Geological Survey field offices, with participation from affected State governments, and other surface management agencies, if other than the Bureau of Land Management, based upon relevant information including information from the appropriate land-use plan, from nominations and from competitive coal lease applications on file.

(2) *Selection of Proposed Tracts: Short-term Sale.* Proposed tracts for short-term sales will be selected using the same criteria as Bureau motion tracts. Prior to selecting a proposed short-term tract the Bureau must determine that the application meets the short-term leasing criteria.

(3) No lands may be included in a proposed tract unless: (i) the land is included in a completed land-use plan and leasing is compatible with the plan; (ii) the lands have been included in a known recoverable coal resource area (KRCRA);

(iii) the lands have been included in a nomination or have been identified by BLM as potential leasing tracts or included in a short-term lease application.

(4) *Tract Selection Factors.* The selection of proposed lease tracts will include consideration of such factors as: depth, quality, thickness and extent of the coal resource; water resource availability; relationship to existing communities; potential impacts on economic structure (e.g., employment, available services, etc.); service and access corridors; aesthetic qualities such as scenic, cultural, Wildlife, and vegetative values; rehabilitation potential and Coal Resources Regulations Guideline No. 1 (41 FR 43722).

(c) *Compliance with NEPA.* The National Environmental Policy Act will be complied with as follows: If several proposed leasing units have significant related characteristics and would sustain similar or related environmental impacts, as determined by the Secretary, they may be covered by a single regional environmental impact statement. Where leasing actions are adequately covered in a regional impact statement, no additional impact statement need be prepared. A public hearing will be held after publication of a draft regional environmental impact statement. An environmental assessment record or an impact statement, as appropriate, will be prepared for proposed leasing actions not included in a regional impact statement. The Department will provide public notice and an opportunity for a public meeting on an environmental assessment record for a coal leasing proposal that indicates that an environmental impact statement is not required.

(d) *Technical examinations.* A technical examination in accordance with the procedures in 43 CFR 3041.2 and 3041.2–1 will be completed on each unit after completion of the final environmental impact statement or environmental assessment to identify specific reclamation requirements and tracts requiring special environmental consideration and to prepare bonding requirements and stipulations to minimize impacts upon the environment and other resources, lands uses, or programs. Reclamation requirements will be imposed in accordance with 43 CFR 3041. The technical examination will include an evaluation of the proposed leasing unit to balance the value of the coal against the cost of mining, the cost of mitigation of environmental damage, and the significance of unmitigable damages. The Bureau will obtain from the Geological Survey an evaluation and comparison of the effects of recovering coal by deep mining, by surface mining, and by other methods to determine which method or methods achieves the maximum economic recovery of the proposed tract.

(e) *Recommendation of tentative coal lease tracts.* (1) After the BLM has completed the actions required by paragraphs (a)–(d) of this section, after State government and surface management agency consultation, and after holding a public hearing, on the record, in the area which may be affected by the proposed coal lease sale, the State Director will recommend suitable tentative coal lease tracts to the Director. The Director will consolidate approved field recommendations into a proposed Coal Lease Sale Schedule for review and approval by the Secretary.

(2) The Director's recommendation, and the Secretary's final approval, shall include a written synopsis of earlier analyses which evaluates and compares:

(i) The effects of recovering coal by deep mining, by surface mining and by any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract, and

(ii) The effects which mining the proposed lease might have on an impacted community or area, including impacts on the environment, on agriculture and other activities, and on public services.

(f) Qualified applicants. Leases may be issued to qualified applicants listed in Subpart 3502 of this chapter unless:

(1) The qualified applicant, or any subsidiary, affiliate, or person controlled by or under the common control of the qualified applicant holds a lease or leases to coal deposits issued by the United States and has held the lease for 10 years and is not producing coal in commercial quantities.

Exceptions. A lessee is not disqualified from holding a lease if either production is interrupted by strikes, the elements, or casualties not attributable to the lessee, or the Secretary has suspended the requirement of continued operation upon payment of advance royalties.

(i) The 10-year period referred to in paragraph (a) of this section shall begin on August 4, 1976, or the date the lease is issued, whichever is later.

(ii) For the purpose of this paragraph, production of coal in commercial quantities means production adequate to meet the requirement for continuous operation as defined in § 3500.0–5(g) of this chapter; or

(2) The qualified applicant holds or controls more than 46,080 acres of Federal coal leases in any one state or 100,000 acres of Federal coal leases in the entire United States.

§ 3525.2 Lands subject to leasing.

(a) The Secretary may issue coal leases on all lands owned by the United States except lands in the:

(1) National Park System;

(2) National Wildlife Refuge System;

(3) National Wilderness Preservation System;

(4) National System of Trails;

(5) Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act;

(6) Incorporated cities, towns and villages; and

(7) Tide lands, submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

(8) Lands acquired by the United States for the development of mineral deposits, for foreclosure or otherwise for resale, or reported as surplus property pursuant to the provisions of the Surplus Property Act of 1944.

(9) Naval Petroleum Reserves, The National Petroleum Reserve in Alaska, and oil shale reserves.

(b) (1) The Secretary may issue coal leases with the consent of the Secretary of Defense on acquired lands set apart for military or naval purposes only if the leases are issued to a governmental entity, including any corporation primarily acting as an agency or instrumentality of a State, which

(i) Produces electrical energy for sale to the public; and

(ii) Is located in the State in which the leased lands are located.

(2) A government entity is located in a State if its production facilities are in that State, and the coal produced from the lease will be used in the State.

(c) The regulations in Subpart 3525 of Title 43 CFR do not apply to the leasing and development of coal deposits owned by Indians and subject to the trust protection of the United States. Regulations governing those deposits are found in 25 CFR Chapter I.

§ 3525.2–1 Special leasing opportunities.

(a) The Secretary shall, under the procedures established under this subpart, reserve and offer a reasonable number of coal lease tracts within competitive lease sales each year as special leasing opportunities. Except for the limitation on bidding contained in paragraph (b) of this section, all of the requirements of this subpart apply to special leasing opportunities including the requirement that the coal be leased at its fair-market value.

(b) Only public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations controlled by any of these entities which have a definite plan to produce energy for their own use or for sale of their members or customers will be eligible to bid for leases designated as special leasing opportunities. Evidence of qualification to bid for leases designated as special leasing opportunities must be filed with the Department at least 60 days prior to a sale.

(c) The Secretary may designate certain coal lease tracts as special leasing opportunities only if a public body has requested, in the nomination process or elsewhere, that the procedures of this section apply.

(d) Leases issued under this Section may be assigned only to another public body.

§ 3525.2–2 Request for information on areas of interest.

(a) *Purpose.* This section establishes a procedure by which industry, the general public, and State and local governments can inform the Department of the Interior of their views on coal leasing in particular areas. The Department will incorporate the information it receives into its internal planning processes for Federal coal leasing tract selections. Except for short-term leasing applications, nominations are the primary source of information on the need for additional coal leasing.

(b) *Description of process.* The Director will request information on an annual basis, or as necessary. Any person may file with the Bureau, a statement with supporting information, asking the Director to make a request for nominations. The Bureau is not required to act on the statement. The Request for Information on Areas of Interest will consist of two types.

(1) *Industry nominations.* Nominations from industry of tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(2) *Areas of public concern.* Concurrently with Industry Nominations, State and local governments and the general public are requested to submit Areas of Public Concern covering tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(c) *Use of nominations.* Information obtained through the nominations process will be analyzed and compared with multiple resource opportunities identified in the land-use planning process. Proposed coal lease tracts will then be developed on the basis of nominations and multiple resource information.

(d) *Description of nominations.* All nominations or statements of information for or opposed to leasing shall: (1) (i) Describe the lands by legal subdivisions, section, township, and range; or in the case of land covered only by protracted surveys, by section, township, and range according to an approved protraction diagram; or

(ii) Use the Bureau of Land Management's Surface/Minerals Management Quads (minerals ownership maps) to indicate nominated areas. A readily discernible line on these maps conforming to legal subdivision and section lines will be accepted as the description required in paragraph (d) (1) (i) of this section. The maps are available for sale at BLM State and most District Offices.

(2) Describe reasonably compact areas, which will be assumed to include all Federal coal within the boundaries described, and may not exceed 25,000 acres.

(e) *Multiple nominations.* If a person submits two or more nominations for leasing or two or more nominations against leasing, choices shall be ranked in order of importance and shall be numbered consecutively. Nominations should be ranked on a nationwide basis.

(f) *Inspection and copying.* The procedures in 43 CFR Part 2 govern the public inspection and copying of information submitted under this section.

(g) *Notice of requests for nominations on areas of interest.* (1) Notice of each Request for Information on Areas of Interest will be published in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the State affected and will specify the area or areas covered by the call, the size and ranking of nominations, the period of time within which to submit nominations, and the addresses to which the nominations are to be submitted.

(2) *Lands Eligible for Nominations.* Nominations will be accepted only for those lands that are eligible for coal leasing. Lands not subject to leasing include (i) lands listed in § 3525.5; (ii) lands withdrawn from coal leasing or otherwise not subject to the provisions of the Mineral Leasing Act; (iii) land subject to a coal lease, permit or preference right lease application; and (iv) areas designated by BLM as primitive areas.

(h) *Areas nominated in national forest system.* The authorized officer will notify the Secretary of Agriculture of all lands nominated for leasing that are in the National Forest System.

(i) *Meeting on Nominations.* Prior to the selection of proposed tracts, the Bureau will hold a public meeting on nominations if the public has not had an opportunity to comment on the nominations in the land-use planning process.

§ 3525.3 Applications: Short-term sales.

§ 3525.3–1 Conditions of acceptance.

Applications for coal leases will be accepted only if the applicant shows that (a) the coal is needed to maintain an existing mining operation, or (b) the coal is needed as a reserve for production in the near future.

§ 3525.3–2 Preliminary data.

(a) Any application for coal lease filed pursuant to the regulations in this Chapter shall contain preliminary data to assist the authorized officer in making a technical evaluation and environmental assessment as described in § 3041.2.

(b) Such preliminary data shall include: (1) Such map, or maps, as may be available from State or Federal sources, on which shall be shown the topography of the land applied for, and on which the applicant shall show physical features and natural drainage patterns and existing roads, vehicular trails, and utility systems; the location of any proposed exploration operations, including seismic lines, drill holes, to the extent known, the location of any proposed mining operations and facilities, trenches, access roads or trails, and support facilities incidental thereto, including the approximate location and aerial extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(2) A narrative statement, including: (i) The anticipated scope, method, and schedule of exploration operations, including the types of exploration equipment to be used.

(ii) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed.

(iii) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

(iv) A brief description, including suitable maps or aerial photographs as appropriate, of the existing land use within and adjacent to the lands applied for; and of known geologic, visual, cultural, or archaeological features; and the known habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed or reasonably anticipated exploration or mining operations.

(v) A brief description of the proposed measures to be taken to maximize, control, or prevent fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, and hazards to public health and safety; to reclaim the surface; and to otherwise meet applicable laws and regulations, which the applicant wishes to have considered by the authorized officer.

(c) The applicant shall not enter upon the land for any operational purpose, except for casual use, without prior authorization. Casual use, as used in this section, means activities which do not cause significant surface disturbance or damage to lands, resources, and improvements, such as activities which do not include (1) the use of heavy equipment or explosives, or (2) vehicular movement off established roads and trails which causes such disturbance.

(d) The authorized officer, after reviewing the preliminary data contained in an application, and at any time during a technical examination and environmental assessment, may request additional information from the applicant.

§ 3525.4 Land-use plans.

(a) *Preparation of a land-use plan.* The Secretary may not issue a lease for coal deposits unless the lands containing coal deposits have been included in a comprehensive land-use plan and the sale is compatible with the plan. A comprehensive land-use plan shall:

(1) Use and observe the principles of multiple use and sustained yield set forth in the Federal Land Policy and Management Act of 1976;

(2) Use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) Give priority to the designation and protection of areas of critical environmental concern;

(4) Rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) Consider present and potential uses of the public lands;

(6) Consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) Weigh long-term benefits to the public against short-term benefits;

(8) Provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) Assess the amount of coal deposits contained in the land and shall, based on available information, identify the amount of coal that is recoverable by deep mining operations and the amount that is recoverable by surface mining operations.

(b) Planning responsibilities.

(1) The Bureau of Land Management will prepare plans for land under its jurisdiction in accordance with its procedures.

(2) The Department of Agriculture and other federal agencies with jurisdiction over lands where there is interest in coal mining will prepare land-use plans for those lands.

(3) If the Secretary finds that because of non-Federal interest in the surface, or because the coal resources are insufficient to justify the costs of a Federal comprehensive land use-plan, in an area, he may lease lands in that area if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located, or a land-use analysis prepared by the Secretary of the Interior.

(c) *Consultation and public hearing.* A plan will not be adequate for the purposes of this section unless the agency that prepares the plan has:

(1) Consulted appropriate State and local governments and the general public during the preparation of a plan; and

(2) Provided an opportunity for a public hearing on a proposed plan prior to its adoption if requested by any person who may be adversely affected by the adoption of the plan.

(d) *Hearing Requirements.* The agency that conducts the hearing shall: (1) Publish a notice of the hearing in a newspaper of general circulation at least once in each of two consecutive weeks in the affected geographical area;

(2) Provide an opportunity for testimony by anyone who desires to do so;

(3) Compile a complete transcript of the hearing if a request for a transcript is filed, in writing, at least 10 days prior to the hearing;

(4) Plans adopted prior to August 4, 1976 will be considered adequate if the public had an adequate opportunity to comment on the plan prior to its adoption, even if a formal hearing was not held.

(e) Availability of land use plans. The Bureau's land-use plan and multiple land-use management plans of other Federal agencies, as appropriate, will be available for inspection at the appropriate Bureau or agency office. Upon the request of the Governor of a State affected by coal lease actions, the State Director will make available for his review the land-use plans for that State, and, as appropriate, adjacent States.

§ 3525.5 Consent to leasing.

§ 3525.5–1 Consultation with Federal surface managing agency.

(a) The Secretary may not issue leases for lands the surface of which is under the jurisdiction of any agency other than the Department of the Interior unless the Federal agency has consented to the issuance of the lease, but any lease shall contain terms and conditions as the head of the agency may prescribe for the use and protection of the nonmineral interests in those lands.

(b) The Secretary must accept the conditions prescribed by the surface managing agency, but may prescribe additional terms and conditions that are consistant with the terms proposed by the surface managing agency to protect the interests of the United States and to safeguard the public welfare.

§ 3525.5–2 Consultation with Governors.

(a) *General consultation.* Prior to offering a coal lease for competitive sale, the Secretary shall consult the Governor of the State in which the land to be leased is located.

(b) *Consultation for surface mining proposals in national forest.* (1) Prior to offering a coal lease in a National Forest where the method of mining which achieves maximum economic recovery of the coal resources is surface mining, the Secretary shall submit the lease pro-

posal to the Governor of the State in which the coal deposits are found.

(2) The Secretary may not issue a lease in a National Forest for a lease which the method of mining that achieves maximum economic recovery is surface mining until at least 60 days after he notifies the Governor of the lease proposal.

(3) If the Governor fails to object to the lease proposal in 60 days, the Secretary may issue the lease. If within the sixty-day period the Governor notifies the Secretary, in writing, that he objects to the lease proposal, the Secretary may not approve the lease for six months from the date the Governor objects to the lease.

(4) The Governor may, during this six-month period, submit a written statement of reasons why the lease should not be issued, and the Secretary shall, on the basis of this statement, reconsider the lease proposal.

§3525.6 Notice of lease sale.

(a) *Notice of lease sale.* (1) Publication. Prior to the lease sale, the Authorized Officer shall publish in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the county affected by the sale a notice of the proposed sale. The newspaper notice shall be published once a week for three consecutive weeks.

(2) The notice will show the time and place of sale whether the sale will be at public auction or by sealed bids, the description of the land, and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained.

(3) It will also contain a statement that sealed bids may not be modified or withdrawn unless the modifications or withdrawals are received prior to the time fixed for opening of the bids.

(4) The detailed statement will set forth the terms and conditions of the sale, including the manner in which the bids may be submitted.

(5) The detailed statement will also contain a warning to all bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

(6) The detailed statement will specify that the Government reserves the right to reject any and all bids. If the sale is by public auction, the statement of terms and conditions of the sale will also specify that sealed bids may be submitted. If any bid be rejected, the deposit will be returned.

(7) The detailed statement will also contain a request for comments on the fair market value of the tracts to be sold. The notice shall state the address to where the comments on fair market value should be submitted.

§ 3525.7 Consultation with Attorney General.

(a) Subsequent to a lease sale, but prior to issuing a lease, the Secretary shall notify the Attorney General of the proposed lease issuance, the proposed lessee, normally the high bidder in a sale, and other relevant information. The Secretary may not issue a lease until 30 days after he notifies the Attorney General.

(b) The Secretary shall not issue the lease to the proposed lessee if, during this 30-day period, the Attorney General notifies the Secretary that the proposed lease issuance would create or maintain a situation inconsistent with the antitrust laws, which means:

(1) The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (15 U.S.C., et seq.), as amended;

(3) The Federal Trade Commission Act (15 U.S.C. 41, et seq.), as amended;

(4) Sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

(5) The Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a)."

(c) If the Attorney General notifies the Secretary that a lease should not be issued the Secretary may:

(1) Reject all other bids or may request the Attorney General in accordance with paragraph (a) of this section to consider the issuance of the proposed lease to the next qualified high bidder; or

(2) Issue the lease if, after he conducts a public hearing on the record in accordance with the Administrative Procedures Act, he determines that: (i) Issuance of the lease is necessary to carry out the purposes of the Federal Coal Leasing Amendments Act of 1975; (ii) Issuance of the lease is consistent with the public interest; and (iii) There are no reasonable alternatives to the issuance of the lease that are consistent with the Federal Coal Leasing Amendments Act of 1975, the antitrust laws and the public interest.

(d) If the Attorney General does not give a written reply to the notification in paragraph (a) of this section within 30 days, the Secretary may issue a lease without waiting for the advice of the Attorney General.

§ 3525.8 Award of leases.

(a) *Pre-sale evaluation.* Before the lease sale, the U.S. Geological Survey, considering public comments on fair market value and available geotechnical, engineering and economic data, shall make a coal resource economic evaluation of each tract to be sold and shall submit it to the authorized officer.

(b) *Notification of award.* Bids will be received only until the hour on the date specified in the notice of competitive leasing. All bids submitted after the hour will be rejected. The authorized officer will read all sealed bids. If the procedure calls for sealed bids followed by oral bids the oral bidding will begin at the level of the highest sealed bid received. After the oral bidding has ceased, the highest bid will be announced. The high bidder will be required to comply with 43 CFR § 3521.2–4 and 43 CFR § 3521.4–2. No decision to accept or reject any bid will be made at this time. The sale will be adjourned and the sale panel will convene to determine if the bid adequately reflects fair market value considering, among other factors, comments on fair market value. The recommendations of the panel will be sent to the authorized officer who, after the Department complies with § 3525.8 of this subpart, will make the final decision to accept a bid or reject all bids, as soon as possible after the sale date. The successful bidder will be notified in writing. The Department reserves the right to reject any and all bids but will not accept any bids which are less than the fair market value of the tract. The Department also reserves the right to offer a lease to the second high bidder if the successful bidder fails to execute the lease.

(c) *Intertract competition.* The use of bidding competition between tracts (intertract bidding) is hereby authorized when and if the Bureau of Land Management and the U.S. Geological Survey determine it is needed in the public interest. The authorization to utilize intertract competition does not preclude the use of any other form of competitive bidding procedure.

(d) *Compliance with notice of competitive lease offer.* (1) *Action by successful bidder.* Four copies of the lease will be sent to the successful bidder, who will be required not later than the 15th day after receipt thereof, or the 30th day after the date of the sale, whichever is later, to execute them, pay the balance of the bonus bid or the first payment of the deferred bonus payment on the first year's rental, and file a bond as required by Subpart 3504.

(2) *Death of bidder.* If the bidder dies before the lease is issued, there must be compliance with § 3502.8 of this chapter.

(e) *Deferred Bonus Payment Policy.* All competitive coal lease sales shall be held on a deferred bonus payment basis. In a deferred bonus payment the lessee shall pay the bonus payment in five (5) equal installments: The first installment shall be made as required by § 3525.8(d)(1). The balance shall be paid in equal annual installments due and payable on the first four anniversary dates of the lease. If a lease is relinquished or otherwise terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

§ 3525.9 Documentation.

(a) *Preparation of documents.* Except as may be otherwise expressly set forth in this subpart, decisions and determinations of any appropriate authorized officer acting pursuant to this subpart with respect to issuance of leases, shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such officer.

(b) *Availability of documents.* Except for documents which are subject to withholding under the Freedom of Information Act, any application for a lease, to-

gether with the proposed terms, conditions, and special stipulations and any preliminary data submitted under this subpart shall be available for public inspection in the appropriate BLM office. To allow for such public inspection, a notice of the availability of any such documents shall be prepared by the appropriate officer of the BLM and promptly posted at his office and mailed to the surface owner, if other than the United States, to appropriate Federal and State agencies, and to the clerk or other appropriate officer in the county in which the proposed operation is located for posting or publication in accordance with the procedures of that office. No final action with respect to such documents shall be taken for a period of 30 days after such posting and mailing. A copy of such notice shall be published by the applicant in a local newspaper of general circulation in the locality of the proposed operation at least once a week for four consecutive weeks.

(c) *Transcript of hearings.* Where a hearing under this subpart has been held on the record, a complete transcript, of the hearing, including any written comments submitted for the record, shall be kept and maintained available to the public during normal business hours at the appropriate Federal office under whose auspices such meeting is conducted, and shall be furnished at cost to any interested party.

GUY R. MARTIN,
Assistant Secretary of the Interior.

MAY 9, 1977.

[FR Doc.77-13899 Filed 5-13-77;8:45 am]

Federal Register

TUESDAY, MAY 17, 1977

PART V

ENVIRONMENTAL PROTECTION AGENCY

■

AQUACULTURE PROJECTS

Requirements for Approval of Discharges

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 415-2]

SUBCHAPTER D—WATER PROGRAMS

PART 115—AQUACULTURE PROJECTS

Requirements for Approval of Discharges

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Section 318(a) of the Federal Water Pollution Control Act (Pub. L. 92-500) authorizes the Administrator to permit, after public hearings, the discharge of pollutants to navigable waters associated with an approved aquaculture project under Federal or State supervision. The regulations provide the mechanism by which discharge of pollutants to navigable waters from an aquaculture project and a point source can be permitted. The regulations provide a means for beneficially utilizing nutrient and other specified pollutants for the growth, maintenance, or propagation of aquatic organisms. Crops which can be grown include both plant and animal species which can be used for human food directly or when processed used as an animal fodder.

DATE: The regulations shall be effective June 16, 1977.

FOR FURTHER INFORMATION CONTACT:

Kenneth M. Mackenthun, Director, Criteria and Standards Division (WH-585), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202-755-0100.

SUPPLEMENTARY INFORMATION: On June 13, 1974, Notice was published in the FEDERAL REGISTER (39 FR 20770) that the Environmental Protection Agency (EPA or Agency) was proposing regulations to permit the discharge of pollutants (as defined in the Federal Water Pollution Control Act, Pub. L. 92-500, section 502) to navigable waters in association with approved aquaculture projects, and the procedures for approval of the aquaculture projects. A complete description of the regulations was given in the June 13, 1974, Notice.

Only those aquaculture projects, as defined herein, conducted in navigable waters and receiving a discharge from a point source (as defined in section 502 of the Act) are to be permitted under section 318 permits. Aquaculture activities not covered by these regulations are those facilities operated in ponds, silos, and other structures not within navigable waters, and those facilities operated in navigable waters not receiving a discharge of a pollutant.

EPA received numerous comments on the proposed regulations and procedures which can be grouped as follows. The Agency responses to the comments, including modifications of the proposed regulations, are also set forth below.

1. A general concern was that the application fee of $1,000 as proposed was too high especially in light of the application fee for the National Pollutant Discharge Elimination System (NPDES) permit fee of $100 and the size of most aquaculture operations.

The Agency agrees and accordingly has set the fee for a section 318 permit application at $100.

2. There was general confusion regarding the applicability of a section 318 permit and what operations would be covered under an aquaculture permit.

It may be helpful to clarify the relationship between this program and the NPDES program provided for under section 402 of the Act. The NPDES program is administered either by the Federal government pursuant to the regulations contained in Part 125 of this subchapter or by States pursuant to the requirement of Part 124 of this subchapter. This program is not, in contrast to the program under section 402, one which may be administered by the States; all aquaculture permits are to be issued by the Federal Government.

In many instances both the NPDES permit and the aquaculture permit under this part will be required. For example, a discharger of heat in Maine to a lobster cultivation project will require a permit under this program for the discharge of heat to the project area during the winter months and will also require an NPDES permit during the summer period if the discharge is returned directly into navigable waters rather than to the project area. Also, many projects will currently have NPDES permits. In addition to applying for permits under this program the supplier of the pollutant may have to request modification or termination of his NPDES permit or give notification to the State or EPA Regional Office of the proposed changes to the discharge as required in §§ 124.45(a) and 125.22(a)(1) of this title. Failure to comply with the requirements of an aquaculture permit constitutes a violation of section 301 of the Act, and subjects the violator or violators to enforcement procedures set forth in section 309 of the Act.

New wording has been included in § 115.2(d) outlining which types of projects are subject to these regulations.

3. The adequacy of the public hearing procedures in the regulations was questioned. Some commenters felt that a public hearing is mandatory when issuing a section 318 permit and that such hearing must be held as an adjudicatory-type hearing.

The regulations, as proposed, require that a public hearing be held if an individual alleges that there will be an adverse impact resulting from the proposed project. No changes have been made in this section. Further, since the permit issuance action is not required by the statute to be "on the record," no adjudicatory hearing is required by the Administrative Procedures Act (5 U.S.C. 551 *et seq.*).

4. Since the permit program under section 318 will be Federally operated, certain commenters expressed a concern that State sovereignty will be contravened when designating siting of aquaculture projects. At issue is State designation of the water uses.

While section 401 is not applicable to discharges into the approved project, these (State certification) regulations provide that the State certifying agency, under section 401, will be asked to certify that additions of pollutants to navigable waters outside of the project area will not exceed permissible levels established under sections 301, 302, 306, and 307 of the Act that would be applicable if the designated project area were itself a point source.

5. Monitoring requirements imposed upon the aquaculture operator and pollutant supplier were alleged to be too stringent.

Monitoring requirements in the regulations are essentially identical for both the NPDES program and the section 318 permit system and, like NPDES monitoring, will be adapted to meet individual requirements.

6. The requirements for joint application and permitting procedures in the regulations were considered to be too cumbersome and would discourage aquaculture development.

Aquaculture projects using pollutants within navigable waters will be unique since discharges in excess of those permitted pursuant to effluent limitations are to be allowed within the project area. Therefore, in order to define, monitor, and control both the pollutants added to the project and those migrating or being discharged from the project area, it is necessary that both the supplier of pollutants and the aquaculture operator must apply for a joint permit and each be responsible for their discharges to navigable waters. As discussed in §§ 115.10(f) and 115.12, effluent limitations apply to both the discharges to the aquaculture area and to those pollutants discharged or migrating from the aquaculture area.

No Inflationary Impact Statement is required by Executive Order 11821 for these proposed regulations since the economic effects will not exceed the criteria established by EPA and approved by the Office of Management and Budget for the preparation of such statements.

In consideration of the foregoing, 40 CFR, Chapter 1, Subchapter D is hereby amended to add a new Part 115, "Requirements for Approval of Discharges to Aquaculture Projects," and is to read as set forth below.

The regulations shall be effective June 16, 1977.

Dated: April 25, 1977.

DOUGLAS M. COSTLE,
Administrator.

Subpart A—General

Subpart B—Processing of Permits

AUTHORITY: Secs. 318, 501, Federal Water Pollution Control Act, as amended (33 U.S.C. 1328, 1361); Pub.L. 92-500.

Subpart A—General

§ 115.1 Definitions.

(a) All terms used in this part but not defined herein shall have the meaning given them in section 502 of the Act.

(b) The term "Act" means the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, et seq.

(c) The term "discharge of pollutants associated with an aquaculture project" means the addition or discharge of specific pollutants in a controlled manner from a point source to an aquaculture project to enhance the growth or propagation of the species under culture.

(d) The term "aquaculture project" means a defined managed water area which uses discharges of pollutants into the designated project area for the maintenance, propagation and/or production of harvestable freshwater, estuarine, or marine plant or animal species.

(e) The term "designated project area" means those portions of the navigable waters within which the applicant for a permit pursuant to this part proposes to confine the cultivated species, utilizing a method or plan of operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants permitted under this part, and suffer harvesting within a defined geographic area.

(f) The term "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

(g) The term "Regional Administrator" means one of the ten Regional Administrators of the U.S. Environmental Protection Agency.

(h) The term "applicant" means an applicant for a permit for a discharge of pollutants to an aquaculture project and the operation of the aquaculture project.

(i) The term "operator" means the person or persons operating the aquaculture project in the designated project area.

(j) The term "supplier of the pollutant" means the person or persons operating the point source from which the discharge of pollutants associated with an aquaculture project are made.

(k) The term "permit" means any permit or equivalent document or requirement issued to regulate the discharge of pollutants to an aquaculture project.

§ 115.2 Purpose and scope.

(a) The regulations in this part establish the procedures and guidelines for approval of an aquaculture project and for approval of any discharge of pollutants associated with an aquaculture project.

(b) The regulations are intended to authorize, on a selective basis, controlled discharges which would otherwise be unlawful under the Act in order to determine, in a carefully supervised manner, the existing and potential feasibility of utilizing pollutants to grow aquatic organisms which can be harvested and used beneficially, and to encourage such projects, while at the same time protecting other beneficial uses of the waters.

(c) The regulations in this part do not apply to those aquaculture facilities such as fish hatcheries, fish farms and similar projects which do not utilize discharges of wastes from a separate industrial or municipal point source for the maintenance, propagation and/or production of harvestable freshmater, marine or estuarine organisms. Such projects are regulated under Title IV of the Act.

(d) The regulations pertain only to those projects which are located in navigable waters and into which there is a discharge of pollutants as defined in section 502 of the Act.

§ 115.3 Approval of discharges to aquaculture projects.

(a) The Regional Administrator shall grant a permit authorizing a discharge if he determines that:

(1) Such discharge is associated with an aquaculture project, and

(2) The discharge and the aquaculture project meet the requirements of the Act and of this part.

(b) The granting of a permit for a discharge pursuant to this part will mean that the aquaculture project with which the discharge is associated is an approved aquaculture project within the meaning of section 318(a) of the Act.

(c) All discharges of pollutants or combinations of pollutants from all point sources into the navigable waters, the waters of the contiguous zone or the ocean are unlawful and subject to the penalties provided by the Act, unless the discharger:

(1) Has a permit issued pursuant to this part, part 125 of this chapter, or by a State which has an approved National Pollutant Discharge Elimination System program pursuant to part 124 of this chapter, or

(2) Is specifically relieved by law or regulation from the obligation of obtaining a permit.

§ 115.4 Delegation of authority.

(a) The authority to issue and condition permits, to deny applications for permits, or to revoke permits for discharges pursuant to this part and section 318 of the Act is hereby delegated to each of the Regional Administrators for the area which he administers.

(b) The delegation of authority at 40 CFR 125.5 as relating to section 308 (a) and (b) of the Act shall be applicable to this Part.

Subpart B—Processing of Permits

§ 115.5 General provisions.

(a) The decision whether to issue a permit authorizing a discharge or what conditions should be placed on any such permit shall be based upon an evaluation of how such discharge will meet applicable requirements under the Act and this part.

(b) The expected impact of a proposed discharge or the present impact of an existing discharge, in connection with an aquaculture project on the quality and uses of the receiving body of water, also shall be considered. The objections of any State or interstate agency whose waters may be affected by the discharge shall be duly considered when making any permit decision, whereas pursuant to § 115.9 of this subpart State certification of discharges from the designated project area is provided for.

§ 115.6 Application for a permit.

(a) An application for a permit shall be prepared in accordance with the application form prescribed therefor by the Administrator as in effect on the date of filing of the application.

(b) An applicant for a permit may secure the required application forms from the Regional Administrator. The original and six copies of the application forms must be filed with the Regional Administrator of the EPA Region which includes the State in which the aquaculture project is operating or will operate.

(c) An application submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the application form originates, or the aquaculture project. In the case of a partnership or a sole proprietorship, the application must be signed by a general partner or the proprietor, respectively. In the case of a municipality, State, Federal or other public entity, the application must be signed by either a principal executive officer, ranking elected official, or other duly authorized employee.

(d) Application for a permit or renewal of a permit shall be accompanied by a payment of $100.00 to cover the cost of processing the application and project surveillance.

(1) Checks and money orders shall be payable to the Environmental Protection Agency.

(2) Agencies or instrumentalities of Federal, State or local governments will not be required to pay the fee provided for in this paragraph.

(e) The application for approval of a discharge to an aquaculture project shall be made jointly by both the supplier of

the pollutant and by the operator. The supplier and the operator may be one person. Any permit issued shall be issued jointly.

(f) Applications for discharges to aquaculture projects presently in existence shall be made within 180 days after the date of promulgation of these regulations.

(g) Any person who plans to begin a discharge to an aquaculture project or plans to establish an aquaculture project shall apply for a permit no later than 180 days in advance of the date on which the discharge or the project is to be commenced unless permission for a later application date has been granted by the Regional Administrator.

(h) In addition to the information expressly required to be included in the application, there shall be added any other information the applicant believes necessary to provide a complete description of the project.

(i) Information required need be given only insofar as it is known or reasonably available. In the even any required information is omitted, the applicant shall provide the information that it does have or could reasonably obtain and an explanation of the efforts made to obtain such information.

(j) An application for a permit shall include, at a minimum, the identification of the kind and quantity of pollutants to be used in the aquaculture project.

§ 115.7 Access to facilities and further information during evaluation of the application.

Permit application forms are designed to fit the normal situation for most aquaculture projects in the United States. In many cases, however, further information and site visits may be necessary in order to evaluate the project completely and accurately. When the Regional Administrator determines that either further information or a site visit is necessary in order for the Environmental Protection Agency to evaluate the aquaculture project, he shall so notify the applicant setting forth a date, which is no later than 60 days from the date of notification by which arrangements must be made for receipt of the requested information and/or scheduling of the site visit. In the event that a satisfactory response is not received, the permit may be denied and the applicant so notified.

§ 115.8 Distribution of application and permit.

(a) When an application for a permit is received, the Regional Administrator shall determine if the applicant has provided all of the information required by the application form and by this part.

(b) In order to ensure that the Secretary of the Army, acting through the Chief of Engineers, has adequate time to evaluate the impact of the proposed discharge on anchorage and navigation, the Regional Administrator will forward to the District Engineer in the appropriate district one copy of the application form immediately upon its receipt in the Regional Office in completed form. Accompanying the application will be notice that the District Engineer has a stated number of days to evaluate the impact of granting such permit upon anchorage and navigation and to advise the Regional Administrator of his evaluation. District Engineers of the Corps of Engineers will normally be given thirty days for such evaluation. Where the Regional Administrator finds that less time should be allowed, he shall so advise the District Engineer of such lesser period of time and specify his reasons. Failure of the District Engineer to answer within the allotted period of time will be deemed to be a statement that the District Engineer does not choose to comment on the application. Where the District Engineer advises the Regional Administrator that anchorage and navigation of any of the navigable waters would be substantially impaired by the granting of a permit, such permit will be denied and the applicant shall be so notified. Where the District Engineer advises the Regional Administrator that the imposition of specified conditions upon the permit is necessary to avoid any substantial impairment of any of the navigable waters, the Regional Administrator shall include in the permit the conditions so specified by the District Engineer. Where the District Engineer notifies the Regional Administrator that additional time is needed for his evaluation, such additional time shall be granted where the Regional Administrator determines that the public interest warrants the extension of time to comment.

(c) Complete copies of all applications for discharge of pollutants in association with an aquaculture project filed with the Environmental Protection Agency subsequent to final promulgation of these regulations shall be furnished to the Department of Interior, Department of Commerce, Department of Health, Education, and Welfare, and the Food and Drug Administration for comment, provided that these agencies may waive their right to receive any such applications. The Regional Administrator shall meet with appropriate officials of the Department of Interior and Department of Commerce, Department of Health, Education and Welfare, and the Food and Drug Administration in order to reach agreement as to which existing application forms those agencies are to receive. When an application is transmitted to these agencies, the Regional Administrator shall notify the agencies that they have a stated number of days in which to evaluate the impact of granting such permit upon the fish, shellfish, wildlife resources or food resources of the State in which the discharge will occur, and to advise the Regional Administrator of such evaluations. The normal period of time for such evaluation will be 60 days. Failure of such agencies to advise the Regional Administrator of their evaluation within the allotted period of time will be deemed to be a statement that the agencies do not choose to comment on the application. Where the agencies advise the Regional Administrator that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, wildlife resources or food resources, the Regional Administrator may include in the permit the conditions specified by the agencies. Where such agencies request additional time for evaluation, such additional time will be granted where the Regional Administrator determines that the public interest warrants the extension of time to comment.

(d) Upon receipt of an application from a Federal agency or instrumentality, the Regional Administrator shall make one copy of the application form available to the State water pollution control agency for the State in which the aquaculture project will operate. The State may comment on whether a permit for such aquaculture project shall be granted or if any conditions should be applied to any permit that might be issued. The State shall indicate conditions it believes are necessary in order that the aquaculture project will comply with sections 301, 302, 306 and 307 of the Act. Such comments shall be received within thirty days from receipt of the application form unless the Regional Administrator allows additional time.

(e) The Regional Administrator shall assist applicants for permits in coordinating the requirements of the Act and this part with those of appropriate public health agencies.

(f) If a permit is issued, a copy of the permit and, if not previously transmitted, a copy of the application form shall be transmitted to the State in which the discharge is located. Copies of these documents shall be available for inspection and reproduction by the public in the appropriate Regional Office of the Environmental Protection Agency.

§ 115.9 State certification.

(a) No permit shall be granted until a State certification has been obtained, or has been waived, that discharges from the designated project area would meet the requirements of sections 301, 302, 306 and 307 as if the designated project area were a point source. Pursuant to State certification required by this subsection a statement indicating that the project will be in compliance with State regulations on wildlife and on the introduction or management of wildlife or other biological material is required. A waiver occurs when the certifying agency fails or refuses to act on a request for certification within a reasonable period of time (which shall not exceed one year) after receipt of such request. Three months shall generally be considered to be a reasonable period of time. If, however, special circumstances require that action on a permit application be taken within a more limited period of time, the Regional Administrator may specify a lesser period of time which he determines to be reasonable. He shall then advise the certifying agency of the need for action by a particular date, and that if certification is not received by the

date established, it will be considered that the requirement for certification has been waived. Similarly, if it appears that circumstances may reasonably require a period of time longer than three months, the Regional Administrator may afford the certifying agency up to one year to provide the required certification before determining that a waiver has occurred. Where such extension of time is made at the request of the certifying agency, the request must be in writing and must include the reasons for the request.

(b) Upon receipt of an application which does not include a State certification, the Regional Administrator will make available one copy of the application form to the State water pollution control agency for the State in which the aquaculture project operates or will operate. The Regional Administrator shall advise the State agency that the State must:

(1) Certify that the aquaculture project will comply with the applicable provisions of sections 301, 302, 306, and 307; or

(2) Certify that there are no applicable limitations under sections 301, 302, 306 and 307; or

(3) Deny such certification; or

(4) Waive its right to certify.

The Regional Administrator shall specify a reasonable period of time within which such certification or denial must be received or a waiver will be deemed to have occurred.

Subpart C—Criteria, Terms and Conditions of Permits

§ 115.10 Criteria for issuance of permits.

(a) No permit shall be issued unless:

(1) The Regional Administrator determines that the aquaculture project:

(i) Is intended by the project operator to produce a crop which has commercial value or will be used as food or otherwise in the development of a harvestable crop in the designated project area having commercial value (or is intended to be operated for research into possible production of such a crop); and

(ii) Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation;

(2) The applicant has demonstrated, to the satisfaction of the Regional Administrator, that the use of the pollutant to be discharged to the acquaculture project will result in an increased harvest of the organisms under culture over what would naturally occur in the area;

(3) The applicant has demonstrated to the satisfaction of the Regional Administrator that, if the species to be cultivated in the aquaculture project is not indigenous to the immediate geographical area, there will be minimal deleterious effects on the flora and fauna which are indigenous to the area, that the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous species (or is intended to research into possible production of such a crop), and that there is minimal probability that the introduced species will serve as a carrier or vector of disease to man or to indigenous flora or fauna;

(4) The Regional Administrator determines that the crop will not have a significant potential for human health hazards resulting from its consumption;

(5) The Regional Administrator determines that migration of pollutants from the designated project area to water outside of the aquaculture project will not violate water quality standards or violate effluent limitations applicable to the supplier of the pollutant established pursuant to sections 301, 302, 306, and 307 of the Act as if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond that which had been designated by the State for the original discharge.

(b) No permit shall be issued for any aquaculture project in conflict with a plan or an amendment to a plan approved pursuant to section 208(b) of the Act.

(c) No permit shall be issued for any aquaculture project located in the territorial sea, the waters of the contiguous zone, or the oceans, except in conformity with guidelines issued under section 403(c) of the Act.

(d) Designated project areas shall in no event include a portion of a body of water such that a substantial portion of the biota indigenous thereto will be exposed to the conditions obtained within the designated project area. For example, the designated project area shall not include the entire width of a watercourse, since all organisms indigenous to that watercourse might be subjected to discharges of pollutants that would, except for the provisions of section 318 of the Act, violate section 301 of the Act.

(e) Any modifications caused by the construction or creation of a reef, barrier or containment structure shall not unduly alter the tidal regimen of an estuary or interfere with migrations of unconfined aquatic species.

(f) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed effluent limitations established for such pollutants pursuant to the Act when entering the designated project area.

§ 115.11 Terms and conditions of permits.

Pursuant to § 125.22 of this chapter, the Regional Administrator shall ensure that the terms and conditions of the permit are identical to those which would be placed in a permit issued pursuant to section 402 of the Act; and, in addition, the Regional Administrator shall ensure that the terms and conditions provide for and ensure:

(a) The right of the Regional Administrator or his designee to sample, and inspect, at reasonable times, the crop being grown in the designated project area;

(b) Permits are subject to periodic review and if the project is not in compliance with these regulations, the permit may be suspended. Permits will not be issued for a period of more than five years, which may be renewed;

(c) The issuance of a permit to discharge pollutants in association with an aquaculture project shall not relieve the permittee from any public or private liability associated with the aquaculture project.

§ 115.12 Effluent limitations in permits.

In the application of effluent standards and limitations, water quality standards, and other applicable requirements, the Regional Administrator shall specify for each permit the average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weights and concentrations, or in the case of pH, temperature, radiation, and any other pollutants not appropriately expressed by weight, by an appropriate unit of measure based upon usual scientific practice. The effluent limitations proposed by the Regional Administrator shall apply to both the discharger of pollutants to the project and to the discharge of pollutants from the aquaculture area.

§ 115.13 Monitoring, recording, and reporting.

Any permit shall be subject to such monitoring requirements as may be reasonably required by the Regional Administrator, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). Such monitoring, recording and reporting requirements shall be the same as those that would be required pursuant to § 125.27 b (2), and (3); and, (c), (d), and (e) of this chapter for permits issued pursuant to section 402 of the Act.

Subpart D—Notice and Public Participation

§ 115.14 Formulation of tentative determinations and draft permits.

(a) The Regional Administrator shall formulate and prepare tentative determinations with respect to a permit in advance of public notice of the proposed issuance or denial of the permit. Such tentative determinations shall include at least the following:

(1) A proposed determination to issue or deny a permit for the discharge to and from the aquaculture project described in the application; and,

(2) If the determination proposed in paragraph (a)(1) of this section is to issue the permit, the following additional tentative determinations should be included:

(i) Proposed effluent limitations for those pollutants to be utilized.

(ii) A brief description of any other proposed special conditions which will have a significant impact upon the discharge from the aquaculture project described in the application, and

(iii) Proposed effluent limitations on all other pollutants to be discharged from the point source.

(b) The Regional Administrator shall organize the tentative determinations prepared pursuant to paragraph (a) of this section into a draft permit.

§ 115.15 Public notice.

Public notice of every complete application for a permit shall be circulated in a manner designated to inform interested and potentially interested persons of the aquaculture project and of the proposed determination to issue or to deny a permit, or the intention to hold a hearing on the matter. Procedures for the circulation of public notice shall include at least the following:

(1) Notice shall be circulated within the geographical area of the proposed aquaculture project. Such circulation shall include at least one of the following:

(i) Posting in the post office and public places of the municipality nearest the premises of the applicant in which the aquaculture project is located; or

(ii) Posting near the entrance to the applicant's premises; or

(iii) Publishing in local newspapers and periodicals, or if appropriate, in a daily newspaper of general circulation; except that public notice of hearings shall be published in at least one newspaper of general circulation within the geographical area of the discharge in all cases.

(2) Notice shall be mailed to the applicant and to any person or group upon request.

(3) The Regional Administrator shall place the name of any persons or group upon request on a mailing list to receive copies of notices for all applications within the State or within a certain geographical area.

(4) The Regional Administrator shall notify Federal and State fish, shellfish, and wildlife resource agencies and other appropriate government agencies of each completed application for a permit and of hearings and shall provide such agencies an opportunity to submit their written views and recommendations on each completed application.

(b) (1) Where notice is given of an application for a permit, the Regional Administrator shall provide a period of not less than thirty days following the date of the public notice during which interested persons may submit their written views concerning the tentative determinations or may request that a hearing be held. All written comments submitted during the thirty-day comment period shall be retained by the Regional Administrator and considered in the formulation of his final determinations with respect to the application. Extensions of time for the receipt of comments following the end of the comment period may be granted by the Regional Administrator when the public interest warrants.

(2) Where notice is given of a hearing, the Regional Administrator shall provide a period of not less than thirty days following the date of the public notice during which interested persons may prepare themselves for the hearing.

(c) The contents of public notice of an application shall include at least the following:

(1) The name, address, and telephone number of the Regional Office issuing the public notice;

(2) The name and address of each applicant;

(3) A brief description of each applicant's activities or operations which utilize the discharge described in the application including a statement of whether the application will result in a violation of water quality standard outside of the project area;

(4) The name of the waterway in which the aquaculture project is to be constructed;

(5) A brief description of the procedures to be followed in the formulation of final determinations, including thirty-day comment period required by paragraph (b) of this section and any other means by which interested persons may influence or comment upon those determinations;

(6) A statement of the tentative determination made pursuant to § 115.14 of this part; and

(7) A comparison of the discharges to be permitted and those limitations which would otherwise apply.

(d) The contents of public notices of any hearing shall include at least the following:

(1) The name, address, and telephone number of the Regional Office holding the hearing;

(2) The name and address of each applicant whose application will be considered at the hearing;

(3) The name of the waterway and a short description of the location where the aquaculture project is or will be located;

(4) A brief reference to the public notice issued for each application, including the Standard Industrial Code (SIC) number of the discharge source, if applicable, and the date of the public notice of the application;

(5) Information regarding the time and location for the hearing;

(6) The purpose of the hearing;

(7) The address and telephone number of premises at which interested persons may obtain further information, request a copy of each draft permit prepared pursuant to section 115.14 of this part, and inspect and copy forms and related documents; and

(8) Where applicable, a statement that confidential information deemed confidential under 5 U.S.C. 552(b)(4) or 33 U.S.C. 1318 has been received may be used to determine some of the conditions for the permit.

(e) The Regional Administrator, at his discretion, may include in any notice of application for a permit under paragraph (c) of this section a notice of hearing in accordance with paragraph (d) of this section, whether or not any request for such hearing shall have been submitted to him.

(f) If individual States, in connection with applications for certification required by § 115.9 of this part, wish to enter into agreement for joint Federal-State public notice concerning permits, the Regional Administrator may, after consulting with the headquarters of the Environmental Protection Agency, approve mutually satisfactory agreements consistent with this section.

§ 115.16 Public hearings.

(a) Any applicable affected person may, within thirty days of compliance by the Regional Administrator with the provisions of § 115.15, object to the issuance of the permit described in the public notice, and may request a public hearing.

(b) Within 10 days of receipt of any request for a public hearing under paragraph (a) of this section by any person who alleges facts which, if true, would be relevant to the decision to grant or deny the permit, the Regional Administrator shall call a public hearing, to be held as near as practicable to the location of the proposed aquaculture project. Notice of any such hearing shall be given under § 115.15 and shall be given not less than 10 working days prior to the time scheduled for the hearing. The Regional Administrator may convene a public hearing in any other case in which he determines there is substantial public interest in, or opposition to, the proposed permit, including any case in which his tentative determination is to deny the permit.

(c) Hearings convened pursuant to paragraph (b) of this section shall be conducted before a presiding officer to be designated by the Regional Administrator. The presiding officer shall have the authority to limit the introduction of irrelevant or repetitious evidence, and to limit cross-examination. Following the conclusion of the hearing, the presiding officer shall, within 15 working days, submit written findings and recommendations as to whether the tentative determination of the Regional Administrator should be adhered to, or modified in any respect.

§ 115.17 Public access to information.

Certifications issued pursuant to § 115.9, the comments of all governmental agencies on a permit application, and all information and data provided by an applicant or permittee identifying the nature of the aquaculture project shall be available to the public in accordance with the requirements of section 308(b) of the Act.

[FR Doc.77-14012 Filed 5-16-77;8:45 am]

Federal Register

TUESDAY, MAY 17, 1977

PART VI

COMMODITY FUTURES TRADING COMMISSION

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REPORTS—GENERAL PROVISIONS

Adoption of Amendments to the Reporting Requirements

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 15—REPORTS—GENERAL PROVISIONS

Adoption of Amendments to the Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("the Commission") has found that the growth in trading volume and open interest in certain markets has resulted in the filing of an ever increasing number of reports that are not necessary to the Commission's market surveillance program.

The Commission has therefore adopted amendments to its reporting regulations under the Commodity Exchange Act, as amended ("Act"), to raise the position levels in certain commodities at which series '03 reports must be filed by traders and series '01 reports must be filed by futures commission merchants ("FCM's") and foreign brokers.

The intended effect of this action is to alleviate an unnecessary reporting burden on the public and to reduce the amount of paperwork processed by the Commission.

EFFECTIVE DATE: June 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Lamont L. Reese, Office of the Chief Economist, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, 202-254-7406.

SUPPLEMENTARY INFORMATION: Reporting levels are set in various commodities to ensure that the Commission receives adequate information to carry out its market surveillance programs, which include detection and prevention of market congestion and price manipulation and enforcement of Commission and exchange imposed speculative limits on trading and net positions.[1] Generally, the reporting levels refer to the number of open positions in a commodity futures contract on any one contract market owned or controlled by a trader that require the trader and the FCM or foreign broker of which he is a customer to file reports with the Commission. The FCM or foreign broker identifies the trader on a Form 102 and reports on the series '01 reports all positions carried for the trader that equal or exceed the reporting level in any community. The trader, if his position is equal to or in excess of the reporting level, is required to report on a series '03 report all positions he owns or controls as well as trades and deliveries in the subject commodity.

Upon review of the information it currently collects, the Commission has found that the growth in trading volume and open interest in certain markets has resulted in the filing of an ever increasing number of reports that are not necessary to the Commission's market surveillance program. Accordingly, the Commission has determined that reporting levels should be raised for the following commodities: in wheat, corn and soybeans, from 200,000 bushels to 500,000 bushels; in silver bullion, from 50 contracts to 100 contracts; in soybean oil, soybean meal, cattle, hogs, sugar, copper, gold and silver coins, from 25 contracts to 50 contracts;[2] reporting levels in all other commodities are not changed. In selecting the new levels, the Commission has considered its current information requirements for surveillance purposes and its anticipated requirements if the series '03 reports are eliminated as the Commission has proposed.[3] Reporting levels at which merchandisers, processors, and dealers in certain commodities must file series '04 reports are unaffected by these amendments. Regulation 15.03(b), as amended, 41 FR 4811 (November 2, 1976).

In consideration of the foregoing, the Commission, pursuant to its authority under sections 4g(1), 4i, and 8a(5) of the Act, 7 U.S.C. 6g(1), 6i and 12a(5) (Supp. V, 1975), hereby amends Part 15 of the Code of Federal Regulations as follows:

§ 15.03 Quantities fixed for reporting.

(a) The quantities fixed for the purpose of reports filed under Parts 17, 18 and § 19.02 of this Chapter are as follows:

Commodity:	
Wheat (bushel)	500,000
Corn (bushel)	500,000
Soybeans (bushel)	500,000
Oats (bushel)	200,000
Rye (bushel)	200,000
Barley (bushel)	200,000
Flaxseed (bushel)	200,000
Soybean oil (contract)	50
Soybean meal (contract)	50
Live cattle (contract)	50
Hogs (contract)	50
Sugar (contract)	50
Copper (contract)	50
Gold (contract)	50
Silver coins (contract)	50
Silver bullion (contract)	100
Cotton (bales)	5,000
All other commodities (contracts)	25

* * * * *

The foregoing amendment is adopted effective June 1, 1977. The Commission finds that the foregoing action relieves a burden heretofore imposed and, therefore, that the notice and other public procedures called for by 5 U.S.C. 553 are not required.

Issued in Washington, D.C., on May 12, 1977.

By the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc.77-14024 Filed 5-16-77;8:45 am]

[1] The following commodities are those for which Commission speculative limits are in effect: wheat, grains (including oats, barley and flaxseed), corn, soybeans, rye, eggs, cotton, and potatoes. 17 CFR Part 150 (1976), as amended, 41 FR 35060 (August 19, 1976).

[2] Soybean oil, soybean meal, cattle, hogs, sugar, copper, gold and silver coins were, prior to this amendment, included in the "all other commodities" category in § 15.03(a).

[3] See 41 FR 3050 (July 23, 1976).